GREEK LAW DIGEST
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Attracting direct foreign investments into the country constitutes a sine qua non condition for the revival of the development in Greece today; in fact it signifies a precondition to the survival of the Greek economy. Investments will help to the restructuring of the production activity helping the economy to grow. A growing economy will create jobs for people entering the labour market for the first time, and will provide employment opportunities for people currently unemployed and looking for work.

Within this framework, the Greek Law Digest is a tool of exceptional importance, since it constitutes a comprehensive and to the point presentation of the entire Greek law system, which any potential investor has to become acquainted with.

This forward looking initiative of NOMIKI BIBLIOTHIKI is in total concurrence with our top priorities and the fundamental political decisions of the Ministry of Development, Competitiveness and Shipping. We are already undergoing an all inclusive plan to create a business friendly environment; from the launch of the One Stop Shop related to the formation of business entities to the new flexible legal framework concerning private investments; and from the introduction of the Fast Track law facilitating all major investments, to the “Business Friendly Greece” plan that encompasses a whole series of actions with a view to remove the bureaucratic procedures which haunt the entire spectrum of public administration.

As Ministry we support this great endeavour of NOMIKI BIBLIOTHIKI. More to the point, the fact that so many prominent Greek legal professionals participate in the Greek Law Digest guarantees that this Guide can serve an important role to the national effort to attract foreign investment.

We shall stand by NOMIKI BIBLIOTHIKI in any similar future initiative that will add to the nation’s hard effort to sustainable development.
Many tend to believe that legal issues interest only those involved in the legal profession. The same applies to investments, meaning that it is generally thought they address only economists. In reality, exactly the opposite is the case: both legal issues and investments concern all of society. Especially now, investments are, to a greater extent than ever, for the benefit of the whole of society, as they are the main tool for the improvement of the global financial environment.

Among investors it is understood that, for an investment to be considered feasible and successful, it needs three basic characteristics: the desired capital, the appropriate business plan, and the proper legal assistance, what lawyers call «the shield of law». This is achieved through knowledge, experience, consistency and the correct interpretation of laws, provisions, and rules that constitute our legal environment.

The Law Library Guides are an invaluable tool for experts as well as the non-specialist in legal issues, for lawyers and non-lawyers, and in the end comprise a wealth of knowledge in a convenient and comprehensive format. I welcome this publication, that joins a long list of illustrious titles, and which will be the fountainhead for the thousands of volumes of knowledge that, I am certain, will follow.
Greece is currently facing an unprecedented economic crisis, triggered by the global economic crisis. We are convinced that there is no other way than intensifying our efforts to improve public finances and apply crucial economic reforms. We are determined to keep this thoroughgoing procedure and strive to use the crisis as an opportunity to boost the country’s economy by applying a new viable model of development that will set us back on the path to a better future.

It is high time for the country to address as top priority the need to create the best possible environment for foreign investment. By showing the world that Greece is “open for business” we will attract market-leading companies and dynamic entrepreneurs. This will create or safeguard associated jobs and stimulate the national economy. Business people looking for expansion will see Greece as an excellent gateway -without any trade barriers- to more than 140 million consumers in Southeast Europe and the Eastern Mediterranean. The country offers vast business opportunities for investors, qualified workforce and efficient resources which are needed to achieve long term business success.

Attracting foreign investment is a key to overcome the crisis. The Greek Law Digest intends to serve as a one-stop reference guide, giving investors a comprehensive tool to understand the Greek legal regulatory framework. Written by top qualified and experienced Greek lawyers and legal counsels, this guide provides practical and comprehensive legal advice on all the basic regulatory and legal aspects that an investment in Greece may entail. Coverage includes the structure of the national judicial system, law concerns in trade and business formations, commercial agreements, legal matters related to various industries such as shipping, tourism, green and clean energy, tax law requirements and so many other topics.

Greek Law Digest has been conceived and realised in difficult times as a model work with the inspiration to assist the country’s efforts to overcome this harsh crisis by providing foreign investors with a comprehensive, practical and methodical guide on all legal aspects that investing in Greece may involve.

To this I hope it will serve its role as valuable tool for foreign business people.

I would also like to express my sincere gratitude to the Minister of Development, Competitiveness and Shipping Mr. M. Chrisochoidis, as well as to the Executive President of INVEST IN GREECE S.A. Mr. A. Syngros, for the great honor they made to put the Greek Law Digest under their auspices supporting us thereby to the highest degree. I also thank them for the supportive and kind foreword with which they provided this Work.

I am also sincerely grateful for the considerate and kind introduction that the Former Minister of State Mr. H. Pamboukis, Professor of Private International Law and International Transaction Law in the University of Athens has honoured us with.
Introduction

Harry P. Pamboukis
Professor of Private International Law and International Transaction Law,
University of Athens, Former Minister of State

Since the end of 2009, as a result of a combination of international and local factors (respectively, the world financial crisis and the country's fiscal imbalances), the Greek economy is facing its most-severe crisis since the restoration of democracy in 1974.

As a consequence, the country has agreed to receive a rescue package from a trilateral mechanism of financial support, comprising the EU, the IMF and the ECB. To insure the funding, the country has adopted a restrictive income policy and a drastic limitation of public expenses in order to bring its deficit under control.

Making use of the financial aid that is now receiving, the country is fighting to overcome this emergency by applying strict economic measures and drastically limiting public expenses aiming to financial rationalization. It is evident that the introduction of such austerity measures have a negative impact on financial fundamentals. The country has entered into a very difficult phase, people will have to go through very tough time and we all have to work hard to achieve economic recovery for the benefit of each and every one of us.

Yet, we all know that in order to achieve economic recovery we definitely need growth. And while the world economy seems to have entered a prolonged recession, we need to make our best to restart our economy. And that requires foreign capital and foreign investments.

It is to this end that Greece has to ensure it provides a favourable investment and business environment, it creates additional investment opportunities and undergoes proper economic and structural reforms.

Despite the economic crisis that emerged in 2010, Greece remains appealing as an investment location. Despite the severe economic crisis Greece is facing, the country's performance in attracting foreign investment has been satisfactory in comparison with the previous year. It offers businesspeople a wide variety of investment opportunities that take advantage of the country's strategic geographic location and unique competitive advantages (natural resources, human resources and infrastructure). Greece is a natural gateway to more than 140 million consumers in Southeast Europe and the Eastern Mediterranean, a region with a GDP of almost 1 trillion Euros.

On the other hand, to attract foreign investments prerequires that we ensure that investors are not exposed to non-business risks. This signifies that we implement regulatory reforms in a manner that we provide potential investors with greater certainty on the relevant regulatory environment that will apply after investment so that investors are informed about and can rely on the proposed nature of regulation and role of government in the industry of their interest. It is also essential to introduce measures that enhance the competitiveness of Greece, or the competitive conditions
in all its markets. Proper land planning and defeating overregulation, which is the source of corruption and bureaucracy, are also sine qua non for investors to trust Greece. And this means acquiring a new modern, productive working model and a new modern public administration!

We all have to show that the attracting foreign investments is an irreversible project for Greece. And this effort of attracting foreign investments should be national; we should all participate, with all our forces. This is a well proven way to help overcoming the crisis the sooner the possible.

It is to this effort, that Greek Law Digest serves as a valuable tool for the comprehension of our legal environment, and consequently for the promotion of foreign investments. The main achievement of Greek Law Digest is that it offers a comprehensive outlook of the complicated Greek legal environment being simple, practical and all-encompassing at the same time. It is simple because it is equally comprehensible not only to fellows specialized legal counsellors but to businessmen as well. It is practical, for it gives simple yet thorough answers to what it is in effect in Greece; and last but not least, it is an all inclusive guide as it is structured in sections covering a most wide range of queries that potential investors may have when thinking of investing in Greece.

Greek Law Digest has presents two significant advantages: first and foremost, it pictures in a thorough way, the Greek Regulatory framework, relative to investments. Secondly, the way it is structured in a question-answer basis facilitates foreign investors to perceive the answers they are looking for. Matters such as how our judicial system works, the basic forms of business cooperation, special issues of financial law, consumer law protection and so on are methodically presented. It also systematically covers issues, such as the two sectors of prospective growth, namely tourism and energy (which constitute, along with shipping, the principles of our new developmental effort).

All in all, Greek Law Digest offers a complete perception and acquaintance with the Greek legal, investment environment. I take hereby the opportunity to make special reference to L.3894/2010, known as “fast track” - that is also thoroughly presented in Greek Law Digest - which I had the honour to introduce to our national delegation, under my previous capacity, and which has already, successfully, been implemented.

Greek Law Digest applies primarily to foreign investors and executives, while it constitutes a useful tool for Greek authorities (diplomatic and commercial attaché) who have and should have as their priority the promotion of investments in Greece. Moreover, international specialised organisations, national authorities of foreign countries that provide information regarding investments in Greece, law firms, representatives of foreign establishments and many others, are also potential users of Greek Law Digest.

Furthermore, without any exaggeration, it replies, almost, all inquiries, in relation to investments, such as environmental issues, copyright and so on. All issues are presented from a practical point of view, written by highly qualified and experienced Greek lawyers and counsellors.

Although modest and simple as it may look, this venture is a truly precious tool, especially today, in a period that is mostly needed.

Finally, I would like to express my sincere congratulations to all these, who contributed in the conception and realization of this idea, as well as to “Nomiki Bibliothiki Publishing Group” that pioneers, once more in the right direction.
Contents

Forewords........................................................................................................... 1
GREECE GENERAL INFORMATION................................................. 14

USEFUL INSIGHTS OF THE GREEK ECONOMIC ENVIRONMENT
The Greek Economy ......................................................................................... 17
Infrastructure .................................................................................................. 18
Human Capital .................................................................................................. 21
Trade .................................................................................................................. 24
Foreign Direct Investment .................................................................................. 27
Access to Financing .......................................................................................... 31

JUDICIAL SYSTEM

PROCEDURE BEFORE CIVIL COURTS
Kelemenis & Co. ............................................................................................. 34

PROCEDURE BEFORE ADMINISTRATIVE COURTS
Papageorgiou Alexandra & Partners ............................................................ 40

PROCEDURE BEFORE CRIMINAL COURTS
Anagnostopoulos Criminal Law & Litigation .............................................. 46

ARBITRATION UNDER GREEK CODE OF CIVIL PROCEDURE
Kouvela-Piquet & Associates ........................................................................ 52

ALTERNATIVE DISPUTE RESOLUTION - MEDIATION
Dimitra K. Triantafyllou - DELTA to the EPSILON........................................ 58

ENFORCEMENT OF: FOREIGN JUDGMENTS AND FOREIGN ARBITRAL AWARDS IN GREECE
Meidanis Pagoulatos & Associates Law Office ............................................. 64

PROCEDURES BEFORE EUROPEAN COURTS
Christianos & Partners Law Firm ................................................................. 70

BASIC ASPECTS OF CIVIL LAW

GENERAL PRINCIPLES OF CONTRACT LAW
A.S. Papadimitriou & Partners Law Firm..................................................... 76

SALE OF GOODS
Nikas, Theisen & Associates LLP ............................................................... 82

UNJUST ENRICHMENT
Roussos & Partners .................................................................................... 88

ESTATES - WILLS - HEIRS
Civil Law provisions - Tax Considerations
Vounatsos Attorneys .................................................................................... 92

FAMILY LAW
Law Office George Papacharalampou - Ifigeneia Spanidi & Partners ................. 98

TORT, PERSONAL INJURY & COMPENSATION
Pavlakis - Moschos & Associates ................................................................. 104

BUSINESS ENTITIES

SOCIETE ANONYME - COMPANY LIMITED BY SHARES
General Provisions - Administration
Kelemenis & Co. ............................................................................................ 112

SOCIETE ANONYME - COMPANY LIMITED BY SHARES
Accounting / Audit for S.A. (for non listed)
NOMOS Law Firm ....................................................................................... 118

SOCIETE ANONYME - COMPANY LIMITED BY SHARES
Minority Shareholders Rights - Shareholders Agreements
Dryllerakis & Associates ............................................................................... 124

SOCIETE ANONYME - COMPANY LIMITED BY SHARES
Tax Issues
Dryllerakis & Associates ............................................................................... 130

SOCIETE ANONYME - COMPANY LIMITED BY SHARES
Corporations listed on the ATHEX
Lambadarios Law Firm ............................................................................... 136

LIMITED LIABILITY COMPANY, L.T.D. (E.P.E.)
Formation - Capital requirements - Administration - Distribution of profits - Liquidation
Spiridonos Law Firm .................................................................................... 142

LIMITED LIABILITY COMPANY L.T.D. (E.P.E.)
Accounting books and records - Audit requirements - Tax issues
Iason Skouzos + Partners Law Firm ............................................................. 148

PARTNERSHIPS
General Partnership (OE) - Limited Partnership (EE) - Joint Venture
Athanasios Kikis & Partners Law Office ..................................................... 151

OTHER BUSINESS STRUCTURES
Kouvela-Piquet & Associates ..................................................................... 157

GREEK LAW DIGEST 9
INVESTING THROUGH A LOW TAX JURISDICTION STRUCTURE
Vardikos & Vardikos Attorneys & Counsellors at Law, Tax Consultants .............................................. 163

MUTUAL FUNDS - PORTFOLIO INVESTMENT COMPANIES - VENTURE CAPITAL
A.S. Papadimitriou & Partners Law Firm .................. 167

BANKING ENTERPRISES
Papapolitis & Papapolitis ..................................... 173

HOW TO SET UP AN SA IN GREECE THROUGH THE NEW ONE STOP SHOP PROCEDURE
Vounatsos Attorneys ............................................ 179

BANKING SYSTEM - FINANCE - INVESTMENT

BANKING SYSTEM
Lambadarios Law Firm ........................................ 186

INVESTMENT INCENTIVES LAW
Avgerinos & Partners Law Firm ............................. 192

FAST TRACK LAW
Avgerinos & Partners Law Firm ............................. 198

PUBLIC PROCUREMENT & PROJECTS
Vg Lawyers Vrettos - Ganiatsos & Associates ... 204

PRIVATE PUBLIC PARTNERSHIPS (LAW 3389/2005)
Lambadarios Law Firm ........................................ 210

PRIVATIZATIONS
Lykourezos Law Offices ....................................... 214

SECURITIZATION LAW (LAW 3156/2003)
Sardelas Liarikos & Associates Law Firm ............... 218

PUBLIC CONTRACTS AND COMPETITION LAW
M. & P. Bernitsas Law Offices ............................... 224

LEGAL PROTECTION OF THE PARTIES PARTICIPATING IN THE AWARD PROCEDURE OF PUBLIC CONTRACTS
Varotsos & Varotsos Law Offices ......................... 230

FINANCING FOR THE IMPLEMENTATION OF INFRASTRUCTURE PROJECTS
Karatzas & Partners Law Firm ......................... 236

MERRGERS & ACQUISITIONS

MERGERS - TRANSFORMATIONS OF COMPANIES
Karamanolis & Associates Law Firm .................... 244

PRE-MERGER NOTIFICATION
A.S. Papadimitriou & Partners Law Firm ............... 250

SPIN OFFS - TRANSFER OF BUSINESS SECTORS OR AGGREGATES OF ASSETS & LIABILITIES
Kelemenis & Co .............................................. 256

SHARE TRANSFER DEALS
Kelemenis & Co .............................................. 262

MANDATORY AND VOLUNTARY TAKEOVER BIDS
Karatzas & Partners Law Firm ......................... 268

FINANCIAL CONTRACTS

AGENCY & DISTRIBUTION AGREEMENTS
Legal framework - Tax considerations
Bahas, Gramatidis & Partners .............................. 276

FRANCHISING
Legal Framework - Tax Considerations
Bletas & Costakis Law Firm ................................ 282

LEASING
Legal Framework – Tax Considerations
A.S. Papadimitriou & Partners Law Firm ............... 287

FACTURING - FORFAITING (FORFEITING)
Papageorgiou Alexandra & Partners ..................... 293

FINANCIAL TOOLS

NEGOTIABLE INSTRUMENTS
Papageorgiou Alexandra & Partners ..................... 300

COVERED BONDS
Karatzas & Partners Law Firm ......................... 306

COMPETITION

ANTITRUST REGULATIONS - CARTELS - ABUSE OF DOMINANCE
Dryllerakis & Associates .................................. 314

UNFAIR COMPETITION
Remantas & Linardakis Law Firm ......................... 320

STATE AID
Dryllerakis & Associates .................................. 326

MONOPOLIES
A.S. Papadimitriou & Partners Law Firm ............... 332

INDUSTRIAL & INTELLECTUAL PROPERTY RIGHTS

TRADEMARKS
Dr. P.D. Theodorides - Dr. H.G. Papaconstantinou .. 338

PATENTS
Bletas & Costakis Law Firm ............................... 344

COPYRIGHT LAW
Avgerinos & Partners Law Firm ......................... 349
TRANSPORTATION

SHIPPING
Timagenis Law Firm ............................................ 356

SHIP ARREST IN GREECE
Vardikos & Vardikos Attorneys & Counsellors at Law, Tax Consultants ..................... 362

MARITIME LABOUR LAW ISSUES
Pavlakis - Moschos & Associates .................................. 368

SHIPPING - FINANCE
G. C. Economou & Associates ........................................ 374

SHIPPING DISPUTES RESOLUTION
Dispute resolution under the rules of the Piraeus Association of Maritime Arbitration
Dalakos Fassolis Theofanopoulos & Partners Law Firm
Dimitra K. Triantafyllou - DELTA to the EPSILON.......................... 380

TAXATION OF SHIPS
Deverakis Law Office ................................................ 386

AVIATION
Anastasiou & Associates ................................................ 392

ROAD / RAIL TRANSPORTATION
Athanassiou - Gerapetritis Law Firm ...................................... 397

INSURANCE

INSURANCE
Kelemenis & Co ................................................... 404

INSOLVENCY - BANKRUPTCY

INSOLVENCY / BANKRUPTCY
Kelemenis & Co ........................................................ 412

LAW 3869/2010 - ARRANGEMENT OF DEBTS OF OVER DRAFT INDIVIDUALS
Nikolaos Ch. Chairopoulos & Associates Law Offices ........................................ 418

TOURISM

TOURISM
Kelemenis & Co ................................................... 426

TECHNOLOGY - MEDIA - ELECTRONIC COMMUNICATIONS

ACCESS TO AND REUSE OF PUBLIC SECTOR INFORMATION
Legislative framework
Avgerinos & Partners Law Firm ............................................. 434

ELECTRONIC COMMUNICATIONS
Legal Framework Guide
KLMBT Law Offices .................................................. 440

MEDIA & ENTERTAINMENT
Gouga & Economou Law Office
K And K Law Office ................................................... 446

ADVERTISEMENT
Efthymios G. Navridis & Partners Law Firm ...................... 450

PRIVACY, DATA RETENTION AND DATA PROTECTION IN THE ELECTRONIC COMMUNICATIONS SECTOR - PROVIDERS OF PUBLICLY AVAILABLE ELECTRONIC COMMUNICATIONS SERVICES - COMPETENT SUPERVISORY INDEPENDENT ADMINISTRATIVE AUTHORITIES
Grigoris Tsolias and Associates ........................................ 454

LEGAL ISSUES RELATED TO BUSINESS TO CONSUMERS (B2C) E-COMMERCE
Philotheidis & Partners Law Offices ...................................... 460

ENERGY

WIND FARM ENERGY
Lykourezos Law Offices ............................................. 468

BIOFUELS – BIO FUELS – GEOTHERMAL ENERGY
Foutsis And Partners Law Firm ......................................... 472

SOLAR ENERGY (PHOTOVOLTAIC)
Metaxas & Associates - Attorneys At Law .................................. 477

TRANSFER AND FINANCING OF RES PROJECTS
Law Firm Michelis - Stroglilaki - Reinhardt ......................... 481

OIL REGULATION
Christopoulos Advocates ............................................... 486

ELECTRICITY
Kelemenis & Co .......................................................... 492

NATURAL GAS
Kelemenis & Co .......................................................... 498

ENVIRONMENT

THE CONSTITUTIONAL PROTECTION OF THE ENVIRONMENT
Flogaitis - Sioutis Law Firm ........................................... 506

AIR POLLUTION - INDUSTRIAL NOISE AND CLIMATE CHANGE
Prof Dr Ioannis Karakostas And Associates Law Firm .................. 512

NATURAL ENVIRONMENT

WATER - PROTECTION AND MANAGEMENT
Varotsos & Varotsos Law Offices ........................................ 524

GREEK LAW DIGEST 11
FOREST PROTECTION AND MANAGEMENT

SEA & COASTAL POLLUTION

ENVIRONMENT & INDUSTRY
Dryllerakis & Associates .............................................. 537

WASTE
Solid, urban wastewater, toxics, clinical and hazardous waste, waste management, recycling
Dr. Georgios Sbokos .................................................... 543

SPATIAL AND URBAN PLANNING - LAND USES
Dryllerakis & Associates .............................................. 549

ENVIRONMENTAL LIABILITY
From penal, civil and administrative law point of view
Haidarlis, Sifakis, Magaliou & Associates ............. 555

PROTECTION OF CULTURAL HERITAGE

RADIATION & ELECTROMAGNETIC EFFECTS
Dr. Ekaterini N. Iliadou ................................................. 564

REAL ESTATE

ACQUISITION & OCCUPATION OF REAL ESTATE
Basic legal framework, property rights, procedural issues of acquisition, restrictions
Iason Skouzos + Partners Law Firm ............................... 572

ACQUISITION & OCCUPATION OF REAL ESTATE
Costs, evaluation & taxation
Iason Skouzos + Partners Law Firm ............................... 578

EXPROPRIATION
Papapolitis & Papapolitis .............................................. 583

FOOD & BEVERAGE

FOOD & BEVERAGE
Chaldoupis & Partners Law Offices ................................. 590

LIFE SCIENCES

LIFE SCIENCES
Kyriakides Georgopoulos & Daniolos Issaias.......... 598

CONSUMER PROTECTION

CONSUMER PROTECTION REGULATIONS
Moratis Passas Law Firm ............................................. 606

PERSONAL DATA

PERSONAL DATA PROTECTION
Dryllerakis & Associates ............................................. 612

LOTTERY – GAMES

LOTTERY - GAMES
Efthymios G. Navridis & Partners Law Firm .......... 620

SPORTS LAW

REPORT ON GREEK SPORTS LAW
Dimitrios P. Panagiotopoulos & Partners Law Office ................................................................ 626

EMPLOYMENT

INDIVIDUAL LABOUR LAW
Tsimikalis Kalonarou Law Firm ................................ 634

COLLECTIVE LABOUR LAW
KLC Law Firm ................................................................ 640

SOCIAL SECURITY LAW
Papageorgiou Alexandra & Partners .............................. 646

IMMIGRATION

IMMIGRATION ISSUES
Vardikos & Vardikos Attorneys & Counsellors at Law, Tax Consultants ........................................ 654

EXPORTS / IMPORTS/ CUSTOMS

EXPORTS, IMPORTS AND CUSTOMS DUTIES
Nicholas Voutsas & Partners Athens Law Offices .................................................. 662

TAX

TAX GUIDE
Iason Skouzos + Partners Law Firm ............................. 668

BUSINESS ENTITIES & TAXATION GUIDE
Kelemenis & Co. ............................................................ 674

TAXATION OF INDIVIDUALS
Iason Skouzos + Partners Law Firm ............................. 680

INDIRECT TAXES
Stavropoulos & Partners Law Office .............................. 686

MONEY LAUNDERING - TAX EVASION
C. Papacostopoulos & Associates Law Firm .......... 692
ANTI-CORRUPTION LAWS
Anagnostopoulos Criminal Law & Litigation ..... 697

LEGAL PROFESSION IN GREECE

THE LEGAL PROFESSION IN GREECE
Giannis Adamopoulos
President of Athens Bar Association ............... 704

RELATED INFORMATION

Bar Associations ............................................. 706
Notary Associations......................................... 707
Court Bailiffs Associations ................................. 707
Forensic Services ............................................. 708
General Police Headquarters
of Attika and Thessaloniki ............................... 708
Land Registry Offices of Athens - Piraeus -
Thessaloniki - Patras .................................... 708
Independent Authorities ................................. 709
Ministries .......................................................... 710
Stock Exchange Authorities .......................... 710
Embassies - Consulates ................................. 710
Foreign Chambers of Commerce ................ 711
National Printing Office ............................... 712
Legal Journals .................................................. 712
Law Associations .............................................. 713

MINISTRY OF DEVELOPMENT,
Competitiveness and Shipping

INVEST IN GREECE

GREEK LAW DIGEST
GREECE
GENERAL INFORMATION

Hellenic Republic (Greece)
Area: 131,990 sq. km. (51 square miles)
Length of State Border: 1,228 km
Border Countries: North: Albania, FYROM and Bulgaria. East: Turkey
80% of the country is mountainous and 27% of the total area is cultivated.
Greece's islands account for 19% of the total area of the country and there are more than 15,000 kilometres of coastline.
Official Language: Greek
Currency: Euro
Capital: Athens
Regime: Presidential Parliamentary Republic
Government Type: There is a unicameral Parliament consisting of 300 seats; parliament members are elected by direct popular vote to four-year terms. The Parliament elects the President of the Republic who is the Head of the State. The government which determines and applies the country's general policy must enjoy the confidence of the Parliament. Government consists of the Prime Minister and the Ministers.
The State functions are organised into three authorities:
- the executive authority which is exercised by the Government,
- the legislative authority which is vested in the Parliament and the President of the Hellenic Republic. Laws are voted on by the Parliament and ratified by the President in order to be enacted.
- the judicial authority that is independent of the Parliament and the Government.
Membership in the following international organizations: EU, NATO, EBRD, EIB, IBRD, IMF, IMO, Interpol, OECD, UN, UNCTAD, UNESCO, WHO, WTO, CERN. As of 1 January 2001, Greece became a full member of the European Monetary Union (EMU), replacing its former monetary unit, the drachma (GRD), with the Euro (EUR) with the conversion rate being 1 EUR = 340.75 GRD.

Population 11,171,740
Economically-active population 4.95 million
Birth rate 9.62 births/1,000 population
<table>
<thead>
<tr>
<th>Major Greek Cities</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athens</td>
<td>3,761,180</td>
</tr>
<tr>
<td>Thessaloniki</td>
<td>1,057,825</td>
</tr>
<tr>
<td>Patras</td>
<td>191,058</td>
</tr>
<tr>
<td>Iraklio</td>
<td>137,711</td>
</tr>
<tr>
<td>Volos</td>
<td>85,001</td>
</tr>
</tbody>
</table>

**Adminstrative set up:** For reason of administrative organisation, Greece is divided into 13 regions (named “peripheries”) that are governed by officers appointed by the Government (named “peripheriarches”). Each region (“periphery”) is divided into a number of districts (named “nomoi”) that are governed by local prefects (named “nomarches”) who are elected by popular vote every four years (their tenure will become a five years term after 2014).

*Source: Invest in Greece, www.investingreece.gov.gr*

**Time Zone:** GMT +2

**Working hours**

Private sector office hours are generally 9:00 a.m. to 5:00 p.m. Monday to Friday. Banking hours are 8:00 a.m. to 2:30 p.m. Monday to Thursday and 8:00 a.m. to 2:00 p.m. on Friday. The public sector’s hours for the public are generally the same as Banking hours.

**Public Holidays**

- New Year’s Day: January 1st
- Epiphany: January 6th.
- Pure Monday: 41 days before Easter.
- Independence Day and the Feast of the Annunciation: March 25th
- Easter: Good Friday-Easter Monday.
- Labour Day: May 1st.
- White Monday: 50 days after Easter.
- Dormition (Assumption) of the Virgin: August 15th.
- October 28th: rejection of the Italian ultimatum in 1940.
- Christmas: December 25th -26th.

**Residence permits - Work permits - Visa requirements**

Citizens of EU member states must apply for a residence permit in order to a) work in Greece or b) take up residence in Greece. Paying a visit of up to 3 months does not require a permit.

Citizens of countries outside EU who want to reside in Greece have to apply for a residence permit immediately upon arrival, whereas if they want work in Greece they have to apply for a work permit well before arriving at the country (due to lengthy approval procedures).

Some non-EU citizens may require visas to enter Greece, even for short business visits or vacations.
No Foreign exchange regulations
There are no foreign exchange control restrictions in Greece. However, all monetary transfers to foreign countries must be made through commercial banks in Greece, which are obliged to ensure that the transfer has been subject to, or is exempt from, withholding tax. Payments and other transfers concerning transactions between residents and non-residents must be affected through commercial banks operating in Greece.

Imports: Goods imported from other EU countries are basically duty and tax free subject to minor exceptions. Imported goods from outside EU are subject to Common Customs Tariff (CCT) and classified as per Brussels Standard International Trade Classification of Commodities. Import of products duty-free for manufacturing and re-export is allowed.

Exports: As a rule, a permission of Bank of Greece is required which is granted subject to certain conditions and formalities. Only persons duly registered with the proper Chambers of Commerce or Chambers of Industry may conduct export trade.
1. THE GREEK ECONOMY

The Greek economy, having achieved high growth rates until 2008, showed signs of recession in 2009 as a result of the global financial crisis, whereas in 2010 the recession has been intensified considerably due to country’s fiscal imbalances. The need for consolidation has led the country to embark on a trilateral mechanism of financial support, comprising the EU, the IMF and the ECB. The restrictive income policy and drastic limitation of public expenses had a negative impact on GDP growth in 2010, leading to its decrease by 4.35% (constant prices of year 2000). However, reforms and restrictive policy implementations have already begun to bear positive results, even though fiscal targets are not yet completely met.

The public deficit decreased by 31.82% in 2010 compared with the previous year. An improvement in the development trends of GDP is expected in 2012 through the acceleration of reforms aimed at the development of a more attractive investment and business environment, including liberalisation of a number of markets, faster licensing procedures, the new Investment Law, flexibility in the labour market, as well with a reduction in the cost of production factors due to the crisis. This assessment is also reflected by Business Monitor International (Business Forecast Report / Greece, 1st Quarter 2011), which states an increase of 0.9% of GDP in Greece is expected during 2012. In 2011 it became evident that the recession was deeper than expected, thus additional measures were implemented, and a debt haircut at a level of 50% has been agreed upon.

The Hellenic Statistical Authority provides an estimation of GDP for the second quarter of 2011 at –7.3%, compared to the same period in 2010. Estimates of research analysts (for example, Business Monitor International, Greece, Q4 2011), expect a decline in real GDP growth of 7.1% for 2011, of 3.5% for 2012 and positive values from 2013 and beyond.

### Major Economic Indicators

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP</td>
<td>4.3%</td>
<td>1%</td>
<td>-2%</td>
<td>-4.35%</td>
</tr>
<tr>
<td>Inflation: Annual Average</td>
<td>2.9%</td>
<td>4.2%</td>
<td>1.2%</td>
<td>4.7%</td>
</tr>
<tr>
<td>Inflation: Percentage Change December to December</td>
<td>3.9%</td>
<td>2.0%</td>
<td>2.6%</td>
<td>5.2%</td>
</tr>
<tr>
<td>Labour Productivity (EU - 27 = 100)**</td>
<td>97.1</td>
<td>99.8</td>
<td>98.9</td>
<td>n.a.</td>
</tr>
<tr>
<td>Unemployment Rate</td>
<td>8.3%</td>
<td>7.6%</td>
<td>9.5%</td>
<td>12.5%</td>
</tr>
<tr>
<td>Public Investments (%GDP)</td>
<td>3.4%</td>
<td>3.6%</td>
<td>3.0%</td>
<td>2.8%</td>
</tr>
<tr>
<td>Exports (Goods - Current Prices)</td>
<td>21.4*</td>
<td>22.8*</td>
<td>18.5*</td>
<td>20.7*</td>
</tr>
<tr>
<td>Imports (Goods - Current Prices)</td>
<td>65.8*</td>
<td>71.2*</td>
<td>56.8*</td>
<td>53.4*</td>
</tr>
</tbody>
</table>

* billion €
** Source: Eurostat

* Source: Hellenic Statistical Authority, 2011

* Source: Invest in Greece www.investingreece.gov.gr/
Employment - Unemployment

Unemployment in Greece, up to 2008, was relatively low at 7.6%, approximately the mean value of the Eurozone. During 2009, unemployment rose as a result of the international crisis that also affected Greece and reached 9.5%. In 2010 unemployment showed a further increase, at 12.5%, as a result of the domestic debt crisis. In second quarter of 2011, unemployment rose further to 16.3%, compared with 11.8% of the same quarter of 2010.

Investment

In 2010, fixed capital formation in Greece reached 33.2 billion Euros, showing a decrease of 13% compared with the levels of 2009 (38.2 billion Euros). This decrease is due to the drastic reduction of public expenses and the restrictive fiscal policy resulting from the financial crisis in Greece. Despite the international financial crisis of 2008, which affected global capital flows, and the domestic crisis of public debt, and Greece's inclusion in the IMF-EU-ECB support mechanism, Foreign Direct Investment (FDI) were at relatively satisfactory levels in Greece during 2010, exhibiting stabilising trends after 2009. The total capital inflows in the country in 2010 amounted to 4 billion Euros, while net inflows exceeded 1.6 billion Euros. Due to the crisis, the net FDI inflow in Greece showed a decrease of 5.82% in 2010 compared with 2009. However, this decrease is low taking into consideration the specific financial circumstances and the economic crisis of this year. Important, however, is the fact that total foreign capital inflows (gross inflows), which reflect the real performance of the country in the attraction of foreign investment, showed an increase of 4.96% in 2010.

International Trade

The export of Greek goods during 2010 showed a significant increase, reaching in current prices 20.7 billion Euros, up from 18.5 billion Euros in 2009. This increase is due to the gradual easing of the global financial crisis, especially in traditional markets for Greek products, and also due to the reduction of the prices of goods, intermediate goods, and production factors as a result of the domestic economic crisis. It is noted that imports to Greece at current prices in 2010 amounted to 53.4 billion Euros whereas in 2009 they reached 56.8 billion Euros. Export growth in 2010 and the corresponding decrease of imports have resulted in the further reduction of the trade deficit of Greece.

2. INFRASTRUCTURE

Greece now has a developed infrastructure that enables the uninterrupted implementation of any investment activity. Within the framework of the holding of the 2004 Olympic Games in Athens a number of changes and improvements in a variety of areas -among which includes the infrastructure of Greece- were materialised. The programme to improve infrastructure continues today as Greece invests heavily in strategic projects that facilitate transport, logistics, and telecommunications, so the flow of goods, services, and information is carried out efficiently, promptly, and cost effectively.
Road Network
During the last decade, the road network has seen substantial improvements. One of the largest infrastructure projects in Europe is the Egnatia Highway, a new East-West highway corridor connecting the port of Igoumenitsa on the Ionian Sea with Alexandroupolis, near the Turkish border.
The PATHE highway system has also been substantially upgraded and connects the southern port of Patras, Athens, and Thessaloniki and continues north to the border with FYROM. The third major highway system in Greece is the Ionian Highway that connects Patras with Igoumenitsa.
Within the greater Athens area, the new Attica Highway Ring Road has substantially changed road transport in the capital region and is an important logistics route, connecting the airport with logistics centres, sea ports, and rail stations.
These main arteries are of a high standard and many of Greece's secondary roads have been constructed and improved to provide business and citizens with the best possible connections.

Airports
Greece has 45 airports-15 international state airports, 26 domestic state airports, and 4 municipal airports. Many of these airports, especially on the islands, primarily serve tourists and handle charter flights. In 2001, the Athens International Airport opened and is considered to be one of the best airports in Europe. For a map and list of airports in Greece visit the Hellenic Aviation Authority site at http://www.ypa.gr/
Currently, many of Greece's airports are undergoing significant infrastructure and facility upgrades, and there are provisions for the construction of new airports.

Ports
With hundreds of islands, Greece has many seaports, 12 of which are international. The port of Piraeus is one of the busiest in Europe and is the main cargo port of the country, followed by the ports of Thessaloniki, Patras, and Igoumenitsa. Greece has more than 140 ports that serve passengers and cargo.
Greece's port infrastructure is being constantly upgraded and improved to meet the needs of cargo shipping, security concerns, and the country's 17 million annual visitors.
In November 2008, China's Cosco signed an agreement to run a part of the Port of Piraeus in a 35-year, 4.5 billion-Euro deal that is slated to significantly increase the port's cargo capacity and efficiency. In addition, the agreement will position Piraeus as a leading point of entry for goods from Asia destined for the European market.

Railway
The Greek railway system has been placing emphasis on upgrading its infrastructure. The improvement of the rail bed and the laying of new track to improve transport times have been the main priorities.
The rail system is essentially north to south and connects Patra-Athens-Thessaloniki. In recent years travel time between Athens and Thessaloniki has been reduced considerably, from more than six hours to just over four. Today, the Greek railway serves
destinations outside Greece that include Sofia, Bulgaria; Bucharest, Romania; and Istanbul, Turkey.
The suburban railway connecting Athens Airport with the capital of Athens, and Corinth, is fast and efficient. In addition, the Athens Metro system, the first in the city, has been extremely successful and has had a major impact on improving urban transport. The Athens Metro is expanding its lines to meet increased demand from passengers, and a new metro system is being constructed in Thessaloniki.

**Waterways**
The shipping lanes serving Greece’s mainland and islands are, for the most part, highly efficient and transport large quantities of passengers and cargo every year. In addition to passenger and cargo ferries, a large number of high-speed catamarans introduced in recent years have reduced travel times considerably.

**Power and Energy**
Greece relies on lignite for the majority of its electricity production. In recent years the energy market has been liberalised, providing the private sector with new investment opportunities. In wind and solar, major progress is being made as Greece has committed to a minimum 29% of energy from RES by 2020. The capacity of Greece to handle increased petroleum and natural gas transportation is transforming the country into an energy hub in Southeast Europe.

**Telecommunications**
As in energy, the liberalisation of the telecommunications market has taken place during the last decade, resulting in a large number of telecom suppliers in landline, cellular, and Internet services. The market is now highly competitive and services of a high standard. Cellular phone penetration in Greece is one of the highest in the EU. Since 2007 Greece has been making good progress in adopting digital technologies, and the creation of a nationwide fibre optic network is being promoted during the next decade. The penetration of the broadband network in Greece reached 20% in 2010; the country ranked 1st in the European Union-27 for the annual growth of broadband in the same year.

**Water and Sewage Systems**
As international concerns about climate change mount, Greece has managed to avoid serious problems to date. Concerns are greatest on some islands that have limited fresh water resources and must rely on transported water. Innovative desalination projects using RES technologies are currently being planned for implementation. Almost 100% of households have continuous access to water supply and almost 95% are connected to the sewage system. Relatively new sewage treatment plants serving Athens and Thessaloniki have dramatically improved the water quality in the Saronic Gulf in Athens and the Thermaicos Gulf in Thessaloniki.
3. HUMAN CAPITAL

During the last three decades in Greece, demographic shifts, EU integration, and global trends have been reshaping the economic landscape so that Greece's human resources are meeting the needs of today's service and knowledge-based economy. There is a good supply of highly qualified labour in Greece.

A Shift to Services

The economic focus of Greece has witnessed significant shifts so that as of the fourth quarter in 2010 roughly 68.5% of the workforce is involved in the service sector, 19.1% in industry, and 12.4% in agriculture. Contemporary trends have resulted in a vastly different workforce than that of 20 years ago, and training and education increasingly reflect the needs of today's globalised economy.

Languages

The tourism sector, accounting for 15.2% of GDP (2009), has absorbed the largest increase in human resources. Many of the country's post-secondary educational institutions offer specialised courses in tourism studies, with an emphasis on language training. As a result, Greece ranks favourably in the EU for its number of speakers of a second language. English is by far the most widely spoken second language in Greece. English is the language of business on a daily basis, especially in international companies. Professionals in the workplace are well educated and the level of university degrees in management is by far the highest in Southeast Europe.

Intellectual Capital

Education has been long recognised as the most valuable asset a person can have to advance and Greeks are eager to invest in training their sons and daughters. In fact, Greece sends more students abroad to study, per capita, than any other country. Universities in the United Kingdom, Germany, Italy, France, and the United States boast large numbers of students from Greece, many of whom achieve high academic success. There are roughly 172,000 students enrolled in post-secondary educational institutions in Greece. During the past five years the number of graduate students has increased significantly, reaching 51,873 enrolled in graduate programmes, and 21,404 enrolled in doctoral programmes in the academic year 2008/2009. Greek students have always shown a strong interest in medicine, the sciences, engineering and electronics. In recent years, technology and business administration have become more popular, as new programmes are offered and more opportunities exist to pursue studies outside Greece. Greece's "intellectual capital" will continue to be a strong national asset and investors who are seeking special skills will have a host of competitive advantages when choosing Greece as an investment location.
### Representative Data

#### Number of employed by sector of economic activity

<table>
<thead>
<tr>
<th>Sector of Economic Activity</th>
<th>Number (000s)</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary sector</td>
<td>533</td>
<td>12.4%</td>
</tr>
<tr>
<td>Secondary sector</td>
<td>821.1</td>
<td>19.1%</td>
</tr>
<tr>
<td>Tertiary sector</td>
<td>2,944.8</td>
<td>68.5%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,299</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

*Source: Hellenic Statistical Authority, 2011*

#### Number of employed by branch of economic activity

<table>
<thead>
<tr>
<th>Branch of Economic Activity</th>
<th>Number (000s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, livestock, fishing</td>
<td>533.8</td>
</tr>
<tr>
<td>Mining and quarrying</td>
<td>14.4</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>448.8</td>
</tr>
<tr>
<td>Electricity, Gas, Water</td>
<td>57.6</td>
</tr>
<tr>
<td>Construction</td>
<td>298.6</td>
</tr>
<tr>
<td>Trade</td>
<td>795</td>
</tr>
<tr>
<td>Restaurants, Hotels</td>
<td>296.7</td>
</tr>
<tr>
<td>Transport and Communication</td>
<td>293</td>
</tr>
<tr>
<td>Banking and finance</td>
<td>113.9</td>
</tr>
<tr>
<td>Real Estate</td>
<td>5.1</td>
</tr>
<tr>
<td>Public Administration</td>
<td>369.9</td>
</tr>
<tr>
<td>Education</td>
<td>313.1</td>
</tr>
<tr>
<td>Health and social welfare</td>
<td>243.1</td>
</tr>
<tr>
<td>Other services</td>
<td>516.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,299</strong></td>
</tr>
</tbody>
</table>

*Source: Hellenic Statistical Authority, 2011*

#### Educational level of the Greek labour force

<table>
<thead>
<tr>
<th>Educational Level</th>
<th>Number (000s)</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PhD and/or Master’s degree</td>
<td>109.2</td>
<td>2.54%</td>
</tr>
<tr>
<td>University degree</td>
<td>777.7</td>
<td>18.09%</td>
</tr>
<tr>
<td>Technical degree</td>
<td>749.7</td>
<td>17.44%</td>
</tr>
<tr>
<td>Secondary Education Certificate (Lyceum)</td>
<td>1,388.2</td>
<td>32.29%</td>
</tr>
<tr>
<td>Basic Education</td>
<td>467.3</td>
<td>10.87%</td>
</tr>
<tr>
<td>Lower Education</td>
<td>806.9</td>
<td>18.77%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,299</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

*Source: Hellenic Statistical Authority, 2011*
Labour Productivity - Average hours worked per person in employment, 2009

Source: OECD, Productivity Database, 2011

Labour productivity [annual growth rate, 2009 (%)]

Source: OECD, Productivity Database, 2011
4. TRADE

Exports - Imports of goods

Exports
In 2010, the total value of Greek exports totalled 16,248 million Euros, accounting for 7.1% of Greece’s GDP. Despite the financial crisis in Greece this year, exports showed a significant increase in volume up, 12.5%. This increase is largely due to the gradual decline of the global financial crisis, especially in traditional markets for Greek products, and to the increase of Greece’s competitiveness as a result of the reduction of the prices of goods and the production factors in Greece resulting from the domestic financial crisis.

Destination Countries (2010)
Exports to the European Union (EU) reached 63% in 2010, highlighting the importance of Greek foreign trade to the EU.

Main Export partners:
• Germany and Italy (11%)
• Cyprus (7%)
• Bulgaria (6%)
• UK (5%)
• USA (4%)
• Russia (2%)
• Switzerland (1%)

Export profile of basic commodities:
• Food and beverages
• Industrial products
• Petroleum products
• Chemical products
• Textiles

Imports
Imports fell in 2010, to 47,721 million Euros, down from 48.087 million Euros in 2009. A determining factor in this drop was the restrictive economic policy implemented in 2010 as a result of the economic crisis.

Countries of origin (2010):
The main trade partner of Greece for imports in 2010 was the EU, at 55%.

Main countries:
• Germany (11%)
• Italy (10%)
• China (6%)
• France (5%)
• Holland (5%)
• UK and USA (3%)

Import profile of basic commodities:
• Machinery
• Vehicles for transportation
• Fuel
• Chemical products
• Food

Total foreign trade
Total foreign trade (imports + exports) in Greece amounted to 63,969 million Euros in 2010. Although the export of goods is lower than the import of goods, the trade deficit has dropped to lower levels compared with previous years (31.4 billion Euros in 2010 compared with 33.8 billion Euros in 2009). The trade deficit, for the most part, is balanced by services exports, including shipping, tourism, and financial services.
### Greek Exports / Country

<table>
<thead>
<tr>
<th>Country</th>
<th>2010 (€)</th>
<th>2009 (€)</th>
<th>2008 (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>1,770,247,868</td>
<td>1,596,583,928</td>
<td>1,821,302,845</td>
</tr>
<tr>
<td>Italy</td>
<td>1,756,112,060</td>
<td>1,591,270,948</td>
<td>2,001,859,507</td>
</tr>
<tr>
<td>Cyprus</td>
<td>1,160,653,944</td>
<td>1,047,761,547</td>
<td>1,102,980,598</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1,049,266,645</td>
<td>968,158,262</td>
<td>1,236,989,886</td>
</tr>
<tr>
<td>UK</td>
<td>849,293,260</td>
<td>629,390,865</td>
<td>820,061,877</td>
</tr>
<tr>
<td>Romania</td>
<td>594,014,657</td>
<td>557,719,536</td>
<td>772,417,242</td>
</tr>
<tr>
<td>France</td>
<td>619,595,228</td>
<td>538,459,813</td>
<td>668,378,714</td>
</tr>
<tr>
<td>USA</td>
<td>658,601,437</td>
<td>715,203,755</td>
<td>885,416,085</td>
</tr>
<tr>
<td>Turkey</td>
<td>858,286,681</td>
<td>607,257,141</td>
<td>621,674,009</td>
</tr>
<tr>
<td>Others</td>
<td>6,932,290,607</td>
<td>6,141,084,945</td>
<td>7,402,065,542</td>
</tr>
</tbody>
</table>

### Greek Imports / Country

<table>
<thead>
<tr>
<th>Country</th>
<th>2010 (€)</th>
<th>2009 (€)</th>
<th>2008 (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>5,021,833,044</td>
<td>5,873,685,972</td>
<td>7,238,138,117</td>
</tr>
<tr>
<td>Italy</td>
<td>4,711,332,868</td>
<td>5,434,756,390</td>
<td>6,918,490,534</td>
</tr>
<tr>
<td>Russia</td>
<td>4,668,914,942</td>
<td>2,477,328,297</td>
<td>4,454,048,615</td>
</tr>
<tr>
<td>France</td>
<td>2,337,504,867</td>
<td>2,611,574,693</td>
<td>3,098,017,174</td>
</tr>
<tr>
<td>China</td>
<td>2,880,290,521</td>
<td>3,045,391,531</td>
<td>3,347,145,360</td>
</tr>
<tr>
<td>Netherlands</td>
<td>2,521,959,372</td>
<td>2,575,712,919</td>
<td>2,806,938,547</td>
</tr>
<tr>
<td>Belgium</td>
<td>1,627,125,413</td>
<td>1,856,415,382</td>
<td>2,139,897,833</td>
</tr>
<tr>
<td>Spain</td>
<td>1,441,446,270</td>
<td>1,741,548,489</td>
<td>2,133,684,559</td>
</tr>
<tr>
<td>UK</td>
<td>1,433,080,824</td>
<td>1,644,644,880</td>
<td>1,956,907,714</td>
</tr>
<tr>
<td>USA</td>
<td>1,220,662,129</td>
<td>1,392,150,799</td>
<td>1,650,730,741</td>
</tr>
<tr>
<td>Others</td>
<td>19,857,172,506</td>
<td>19,434,258,896</td>
<td>24,935,472,377</td>
</tr>
</tbody>
</table>

### Greek Imports / Sector

<table>
<thead>
<tr>
<th>Sector</th>
<th>2010 (€)</th>
<th>2009 (€)</th>
<th>2008 (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food-Animals</td>
<td>4,850,085,214</td>
<td>4,815,168,138</td>
<td>5,240,870,654</td>
</tr>
<tr>
<td>Beverage-Tobacco</td>
<td>680,043,050</td>
<td>826,561,783</td>
<td>770,411,263</td>
</tr>
<tr>
<td>Raw Material apart from fuels</td>
<td>1,187,768,333</td>
<td>1,014,676,040</td>
<td>1,667,436,593</td>
</tr>
<tr>
<td>Mining - Fuels - Lubricants</td>
<td>11,229,053,323</td>
<td>7,191,464,429</td>
<td>12,118,128,955</td>
</tr>
<tr>
<td>Oils &amp; grease of animal or plant origin</td>
<td>232,287,163</td>
<td>208,812,911</td>
<td>290,359,758</td>
</tr>
<tr>
<td>Chemicals</td>
<td>7,277,469,133</td>
<td>7,708,957,523</td>
<td>8,308,019,965</td>
</tr>
<tr>
<td>Industrial products</td>
<td>5,064,280,509</td>
<td>5,187,835,247</td>
<td>8,011,927,143</td>
</tr>
<tr>
<td>Machine &amp; Transport Equipment</td>
<td>11,536,204,512</td>
<td>14,687,892,818</td>
<td>16,453,025,783</td>
</tr>
<tr>
<td>Others</td>
<td>5,664,131,519</td>
<td>6,446,099,430</td>
<td>7,819,291,457</td>
</tr>
</tbody>
</table>
# Greek Exports / Sector

<table>
<thead>
<tr>
<th></th>
<th>2010 (€)</th>
<th>2009 (€)</th>
<th>2008 (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food-Animals</td>
<td>3,050,945,301</td>
<td>2,716,132,982</td>
<td>2,710,096,053</td>
</tr>
<tr>
<td>Beverage-Tobacco</td>
<td>540,641,503</td>
<td>589,483,683</td>
<td>578,341,454</td>
</tr>
<tr>
<td>Raw Material apart from fuels</td>
<td>944,974,227</td>
<td>711,925,390</td>
<td>775,375,313</td>
</tr>
<tr>
<td>Mining - Fuels - Lubricants</td>
<td>1,791,502,177</td>
<td>1,362,461,960</td>
<td>1,902,868,998</td>
</tr>
<tr>
<td>Oils &amp; grease of animal or plant origin</td>
<td>287,262,357</td>
<td>283,188,880</td>
<td>328,947,071</td>
</tr>
<tr>
<td>Chemicals</td>
<td>2,363,726,040</td>
<td>2,093,096,455</td>
<td>2,307,113,322</td>
</tr>
<tr>
<td>Industrial products</td>
<td>3,255,261,188</td>
<td>2,827,842,824</td>
<td>3,926,616,193</td>
</tr>
<tr>
<td>Machine &amp; Transport Equipment</td>
<td>1,937,992,854</td>
<td>1,954,798,927</td>
<td>2,431,869,413</td>
</tr>
<tr>
<td>Others</td>
<td>2,076,056,740</td>
<td>1,853,936,186</td>
<td>2,371,918,488</td>
</tr>
</tbody>
</table>

*Source: Hellenic Statistical Authority 2011*

## 5. FOREIGN DIRECT INVESTMENT

**Overview**

Despite the severe economic crisis Greece is facing since 2010, the country’s performance in attracting foreign investment in 2010 was satisfactory in comparison with the previous year. The total (gross) capital inflows to the country in 2010 amounted to 4 billion Euros, while net inflows exceeded 1.6 billion Euros.

*Source: Bank of Greece 2011*
Key features

• Total (gross) inflows of foreign investment capital, which reflect the actual performance of the country in attracting investment, increased in 2010 by 4.96%.
• Net inflows of foreign investment capitals during the same year decreased by 5.82%, which is considered low, based on the particular fiscal circumstances and the economic crisis of that year.
• Inflows of foreign direct investment in Greece fell in years 2009 and 2010, but nevertheless remain higher than during 2003-2005, despite some fluctuations.
• In 2010 the ratio of foreign investments oriented in productive categories, founding and increase of share capital (2,124.5 million Euros) compared with the amounts invested in mergers and acquisitions (413.9 million Euros) improved significantly.
• The inflow of capital in the form of loans, which amounted in 2010 to 1,725 million Euros, indicates the confidence of foreign investors for investment in Greece as well as their willingness to commit funds to the country for future income and growth.
• The difference between total and net FDI inflows to Greece in 2010 relates primarily to repayments of loans to parent companies, as well as expansion capital and/or to subsidiaries in Southeast Europe, which highlights the country’s role as an investment “springboard” to the region of the Balkans.
• The rapid promotion of reforms and the reduction of costs of production, which was the result of the economic crisis in the country, create significant investment opportunities.

Investment capital by country of origin

Countries with strong investment presence in Greece in recent years include ‘traditional’ capital exporting countries such as Germany, France, the United Kingdom, Belgium, Luxembourg and the Netherlands.
Key features
• Investment activity in Greece originates primarily from companies in important markets such as the EU
• Although significant, the U.S. presence is still relatively low, suggesting the existence of significant investment potential which can be realised
• Promising prospects exist in the near future to attract FDI from Russia and Eastern Europe, the Middle East, Arab countries and Asia, particularly China, who are mainly interested in the energy, telecommunications, tourism, transport and logistics sectors.

Sectoral Breakdown of Foreign Investment
FDI inflows by sector of economic activity in Greece in recent years focus primarily in the tertiary sector, followed, with a significant gap, by the secondary sector. The majority of developed countries show a similar structure of FDI.

Total FDI inflows by sector of economic activity for the period 2003-2010

Total value: 36,265.8 billion Euros
Source: Bank of Greece 2011

Key features
• Concentration of FDI in services. This trend was dictated primarily by the development of the country’s financial system, the liberalisation of telecommunications, and the stimulation of trade.
• The proportion of secondary sector is relatively low compared with the potential of the country, a trend that suggests considerable scope for investment.
• Investing in energy (electricity, natural gas) amounted to 5.1% of total investment in the secondary sector and represents a typical investor interest growth during this period. The search for hydrocarbons in Greek territory is expected to play an important role in investment activity.
Specifically:

A. Manufacturing

The sectors of manufacturing with significant investor interest over the period 2003-2010 include chemicals, food & beverage, machinery and metal products.

**Structure of total FDI inflows in manufacturing in the period 2003-2010**

- Food-Beverage-Tobacco: 19%
- Refineries: 10%
- Chemical products: 16%
- Metal products: 13%
- Machinery: 8%
- Motor vehicles: 32%
- Other: 2%

**Total Value: 8,746.5 billion Euros**

*Source: Bank of Greece 2011*

**Key features**

The concentration of business in these areas favors the establishment of new businesses (Greenfield investments) in Greece, and the investment cooperation of foreign companies with Greek companies to produce end products that meet the needs of domestic and international markets.

B. Services

The service sectors with significant investor interest over the period 2003-2010 include telecommunications, financial institutions, trade and tourism.

**Structure of total FDI inflows in services during the period 2003-2010**

- Real Estate: 40%
- Tourism: 32%
- Trade: 7%
- Post-Telecom: 7%
- Financial: 7%
- Intermediation Education-Health: 2%
- Other: 3%

**Total value: 25,496 billion Euros**

*Source: Bank of Greece 2011*
Key features
• Growing investment trends in education and health sectors.
• A low percentage (7%) of foreign investment focused on the least productive class of “real estate”, whereas the majority of foreign capital went into productive activities with high value added.

6. ACCESS TO FINANCING

Investors have a wide selection of alternatives for their financing needs to implement their projects.

1. The Investment Incentives Law provides strong financial incentives to realize projects in numerous sectors throughout the country.

2. The NSRF (National Strategic Reference Framework) 2007–2013 is the reference document for the programming of European Union Funds at national level until 2013.

3. Public Private Partnerships (PPPs) are valuable tool leading to the construction of public infrastructure and the provision of qualitative services to citizens. Via the implementation of PPPs, the public sector is making use of contemporary finance tools to provide services to citizens, enhancing the existing framework of public procurement.

4. Venture Capital and Private Equity financing are at a quite mature stage of development in Greece and have enabled many investors to realize their plans.

5. Financial Institutions, namely Banks, offer to the entrepreneur a wide selection of customised financial instruments and complement the above mentioned financial tools to cover financing needs which cannot be met from other sources or shareholder capital.

Venture Capital in Greece
Greece has a favourable position in the upper part of the European VC ranking and is among the countries performing better than the European average, thanks to a good balance between the tax and legal environments for private equity and venture capital investors, managers and investee companies.

Greece operates a dedicated domestic fund structure, called AKES, for private equity and venture capital, (a closed-end venture capital fund, formed as a partnership). AKES is tax transparent for domestic and non-domestic limited partners, and offers non-domestic limited partners the ability to avoid having a permanent establishment in the country. Furthermore, management fees are exempt from VAT in Greek companies.

Greece provides tax incentives for private equity and venture capital when investing through the AKES. For example, the establishment and management contract of AKES, as well as the payment of the unit holders’ participation, are not subject to any kind of tax, fee, stamp duty, contribution right or any other charge imposed by the State or other third parties.

The overall environment for retaining talent in investee companies and fund management companies in Greece is favourable. Gains from the sale of shares as well as stock options are tax exempt.

Overall, there are 17 venture capital funds active in Greece with approximately 900 million Euro under management. The funds are all members of the Hellenic Venture Capital Association (http://www.hvca.gr/), established in 2003 in Athens.
TANEO - Fund of Funds
Most funds have been incorporated with the participation of TANEO. TANEO is the first and only “fund of funds” in Greece that aims at the competitive development of venture capital funds oriented towards supporting SMEs. Through the 11 TANEO funds, more than 280 million Euro have been directed to Greek SMEs. Through the collaboration of private and institutional investors, TANEO creates new funds, tailor-made to address the needs of small businesses with a vision and a well-developed business plan.
JUDICIAL SYSTEM
What is the type of legal system that Greece has?

The Greek legal system belongs to the Civil Law tradition which is prevalent in continental Europe and has evolved from Roman Law and Justinian's Corpus Juris Civilis and codes such as the Napoleonic Code Civil of 1804 and the German civil code. Of the variants of Civil Law, German civil law is the one that has most affected the Greek legal system.

Civil Procedure in Greece is regulated by the Code of Civil Procedure (CCP) [Kodikas Politikis Dikonomias] which was enacted in 1968. Since then CCP has undergone various revisions. CCP relies heavily on the principle of the parties’ initiative (i.e. courts do not exercise any case management of the kind known to common law jurisdictions and all procedural steps are to be taken, as a rule, by the parties rather than the court); and on the principle of concentration (i.e. there are no pre-trial proceedings and all allegations and evidence are first submitted at the trial stage).

How is the Greek civil court system structured?

CCP provides for three types of civil courts of first instance:

- The Court of the Peace (Eirinodikeio).
- The Single-Member Court of First Instance (Monomeles Protodikeio).
- The Multi-Member Court of First Instance (Polymeles Protodikeio).

Appeals from judgments of the Single-Member Court of First Instance and of the Multi-Member Court of First Instance are tried by one of the fifteen Courts of Appeal (Efeteio) existing in Greece. The territorial competence of a Court of Appeal is decided by the location of the lower court whose judgment is appealed from. Appeals from judgments of the Court of the Peace are heard by the Single-Member Court of First Instance; of the Single-Member Court of First Instance by the Single-Member Court of Appeal; and of the Multi-Member Court of First Instance by the Multi-Member Court of Appeal. The Supreme Court (Areios Pagos) sits in Athens and is not a regular appellate court but rather a court of cassation which can only review questions of law rather than findings of fact.

There are no specialist civil courts in Greece. As a matter of their internal organisation, Greek civil courts are divided in panels/units to which cases are allocated depending on their nature (e.g. commercial disputes, intellectual property, matrimonial matters, employment claims etc.). Such organisation, however, does not necessarily mean that judges sitting on a particular panel specialise in the area of law with which the panel deals.
What are the main stages in ordinary civil proceedings in Greece?

The main stages in civil proceedings are the following:

- Filing an action (agogi) with the competent court of first instance. Such filing does not involve the issuing of a prescribed claim form but rather the filing of a document that sets out, often at some length, full particulars of claim (i.e. facts that the claimant alleges and which, if proved, would establish one or more causes of action against the defendant, and a ‘prayer’ listing the remedies sought). On the date of filing, the court allocates a trial date to the particular action.

- Service of the action which is effected with a court bailiff serving, upon the claimant’s instruction, the action on the defendant. Normally, service must be effected at least 60 days before the trial in case of defendants residing in Greece and 90 days in the case of defendants residing abroad or being of an unknown residence.

- Service of a notice by any person who wishes to be given affidavits by witnesses that it intends to do so at a certain place, date and time before either a Justice of the Peace or a notary public.

- Filing of pleadings and documentary evidence. For cases tried by the Court of the Peace, by the Single-Member Court of First Instance and by the Court of Appeal, pleadings, documents and supporting evidence such as witnesses' statements and experts’ reports must be filed on the date of the trial. For cases tried by the Multi-Member Court of First Instance this must be done 20 full calendar days before the trial. For cases tried by the Supreme Court, such filing must be made 20 days before the hearing.

- Trial, the duration of which is short and completed within the same working day that it commenced.

- Filing of supplementary pleadings by which each party responds to the pleadings and evidence of the other party or parties. For cases tried by the Court of the Peace, by the Single-Member Court of First Instance, by the Court of Appeal and by the Supreme Court, such pleadings must be filed by the third day following the trial. For cases tried by the Multi-Member Court of First Instance, there are two sets of supplementary pleadings: the first is filed 15 days before the trial whilst the second is filed 8 working days after the trial and only comments on the testimonies of witnesses examined during the trial.

- Possibly an appeal which must be filed within 30 days from the service of the judgment by one party on another or within three years from the day the judgment was drawn up and sealed by the court but not served on the other party.

- Enforcement of judgment.

How are civil proceedings commenced in Greece?

Proceedings are commenced by filing an action (agogi) which sets out the names and addresses of the respective parties and, often at some length, full particulars of claim, i.e. the material facts that the claimant alleges and which, if proved, would establish one or
more causes of action against the defendant and a ‘prayer’ listing the remedies sought including a statement of value where the claim is for money. Contrary to common law proceedings, the claimant must specify from the outset the amount sought and cannot state a range of the amounts sought or that the amount will be stated with the progress of the proceedings. There is no prescribed claim form in Greek civil proceedings. Issuing involves the court sealing the action with its official seal which does not alone stop time running for limitation purposes; this is done only after the action has been served on the defendant.

Are there any pre-action interim remedies available?

Before commencing proceedings, a claimant may in urgent circumstances apply for a pre-action interim remedy (e.g. the defendant’s alleged wrongdoing may cause the claimant irreparable continuing damage before trial) in the very same manner as he could later apply for an interim injunction pending trial. Such applications are normally made to the Single-Member Court of First Instance in accordance with the special procedures set out in arts 683 et seq. of CCP. Provisional orders may be granted ex parte ahead of an interim remedy as a matter of great urgency, yet it is very rare that applications are allowed without notice. Despite their increasing popularity - primarily because of the very slow administration of Greek justice - interim remedies are granted parsimoniously by Greek courts. Their range is very wide and the court is free to shape them as deemed most appropriate. The most popular of these remedies include freezing injunctions, mandatory injunctions, prohibitory injunctions and interim payments. When such injunctions are granted before the commencement of proceedings, the court normally instructs that an action should be filed within the next month or so or else the injunction will automatically be discontinued.

What are the main elements of the claimant’s pleadings?

The claimant’s pleadings elaborate on (a) the factual allegations and the material facts set out in the originating action; (b) on the evidence that is being submitted together with the pleadings; and (c) on the legal rules to be applied. Once filed the pleadings cannot be amended. Some further allegations and evidence may be submitted with the supplementary pleadings as a response to the pleadings of the other party or parties to the action (see question 1.3). New evidence or new factual allegations are not allowed to be introduced with the supplementary pleadings.

What is the time limit within which the statement of defense has to be served?

Greek civil proceedings do not have the stages encountered in common law jurisdictions, e.g. statements of case served in sequence between the parties, with the claimant serving particulars of claim first, followed by a defense from the defendant and then possibly a reply from the claimant. As with the claimant’s pleadings, the pleadings of the defendant are not served but filed with the court. They are due to be filed on the same day as those of the claimant’s.
What happens if the defendant does not defend the claim?
Under a recent amendment of CCP (Statute 3994/2011), CCP provides for a default judgment in case a defendant fails to defend the action (i.e. fails to attend trial). If the defendant is absent, the trial will proceed in the absence of the defendant, provided proper service of the proceedings was made on him, and the claimant’s allegation will be accepted as true (arts 270 and 271 CCP).

Is there any particular case allocation system before the civil courts in your country? How are cases allocated?
A case allocation system of the kind found primarily in common law jurisdictions is unknown to civil proceedings in Greece. The court to which a case is allocated normally depends on its financial value and the court’s territorial competence as designated by the parties’ residence or place of business or by the cause of action itself. CCP provides for three types of civil courts of first instance:

- The Court of the Peace (Eirinodikeio) which tries claims up to €20,000.00.
- The Single-Member Court of First Instance (Monomeles Protodikeio) which tries claims between €20,000.01 and €120,000.00.
- The Multi-Member Court of First Instance (Polymeles Protodikeio) which tries claims worth more than €120,000.00.

For certain categories of proceedings (e.g. landlord and tenant claims, real estate matters, employment matters, motor accident claims, professional fees disputes etc.), exclusive jurisdiction is allocated to a particular court regardless of the case’s financial value. Articles 15 (for Courts of the Peace), 6 and 17 (for Single-Member Courts of First Instance) and 18 (for Multi-Member Courts of First Instance) regulate matters of exclusive jurisdiction.

What are the rules of disclosure, if any, in Greek civil proceedings?
Disclosure is not a pre-trial stage of civil proceedings in Greece nor is it based on the idea that lists of documents should be exchanged between the parties early on in the proceedings and that disclosed documents will then be inspected and reproduced. Nor are there any requirements on rules on proper disclosure or disclosure of adverse documents or on a lawyer’s duty to ensure full disclosure. Nor are there any penalties for failure to make full or sufficient disclosure or to comply with disclosure directions. The general rule of CCP is that all documents to which reference is made in the action (agogi) or which support the factual allegations of a party must be disclosed with that party’s pleadings on the day of trial or, in the case of the Multi-Member Court of First Instance, 20 days before it. Crucially, parties are free to choose the documents they wish to disclose and file them with the trial bundles. CCP provides for an application seeking a disclosure order (art. 450 (2), 451 et seq.), yet this is a slow and rigid procedure (only applications specifying the particular document sought in great detail are allowed) which is rarely pursued.
What is the court’s role in the parties’ provision of evidence in civil proceedings?
The court’s role in the parties’ provision of evidence is passive primarily because of the very principle of civil procedure in Greece which requires that evidence should be provided at the initiative and diligence of the parties to an action.

What are the basic rules of evidence?
The general rule is that evidence must focus on material facts that are crucial to the action’s outcome (art. 335 CCP). There are no strict rules on the admissibility of evidence, the overriding principle being that the judge is free to decide on the merits of the evidence (art. 340 CCP). All in all, there are seven broad classes of evidence: admittance of the claim; inspection; expert evidence; documentary evidence; parties’ testimonies; witness statements; and presumptions (arts 339 and 352 et seq. CCP). Interestingly, under Greek rules of civil procedure the parties to an action may only be exceptionally examined if the facts of the case have not been proved by the evidence submitted to the court. In that case a party is examined like any other witness but it is not required to give evidence under oath, unless the court so directs. Moreover, unlike the common law principle against hearsay, the Greek law of evidence is more tolerant of hearsay. By and large, documentary evidence and witness testimonies are the predominant sources of evidence. On the contrary, it is very unusual that a court will resort to inspection of, for instance, land and chattels.

Witness statements (i.e. simple statements of truth which are not sworn) are not used in Greek civil proceedings. On the contrary, affidavits (i.e. sworn statements) made before a Justice of Peace or a notary public or a consul (in case the deponent gives the affidavit abroad) are very common. Nonetheless, affidavits are not exchanged between the parties as they are in other jurisdictions and they are made shortly before pleadings and filed with the court so as to be incorporated into the trial bundles. Interestingly, deponents do not normally attend court nor do they testify during trial. Each party has the right to submit up to three affidavits provided a notice has been served on the party at least two full working days before the deposition.

What are the rules of appeal against a judgment of a Greek civil court?
It is comparatively rare for judgments of Greek civil courts not to be appealed by the unsuccessful party. This is partly because appeals can be brought as of right and do not require prior permission and partly because of the comparatively modest cost of civil proceedings in Greece. As a rule, only final judgments can be considered on appeal whilst non-final judgments (e.g. interlocutory orders) can only be put on appeal together with the final judgment. An appellant must file an appeal notice in which he should set out the grounds on which it is alleged that the decision is erroneous. Grounds for an appeal may relate both to questions of fact, including the evaluation of evidence, and to questions of law (both substantive and procedural). Filing of an appeal notice must be made within 30 days after the final judgment of the lower court was served on the appellant or within 90 days in the case the appellant lives abroad or is of unknown residence. If the judgment has not been served, an appeal notice must be filed within
three years from the day the judgment that is appealed was sealed. Once an appeal notice has been filed it must be served on respondent(s) who reside in Greece at least 60 days before the scheduled hearing of the appeal. Service must be effected at least 90 days before the scheduled hearing of the appeal in the case the respondent(s) live(s) abroad or are of unknown residence. Commencing an appeal has the automatic effect of staying execution on the judgment. Fresh evidence is allowed provided it has emerged after the trial or could not have been obtained with reasonable diligence for use at the time of trial.
What are Administrative Courts?

Regular Administrative Courts are divided into primary and secondary. The primary administrative courts are the One- and the Three-Member Administrative Court. The secondary administrative courts are the Three- and Five-Member Administrative Appeals Court. The Supreme Administrative Court is the Council of State. Administrative Courts include the Court of Auditors, as a special Supreme Administrative Court. The Council of State assumed judicial responsibilities as an administrative court in 1929. Various administrative courts were subsequently specially created, such as the fiscal courts in 1958, with jurisdiction over certain administrative proceedings. The regular administrative courts were established in 1977, with broad powers on administrative differences of substance.

What matters are tried at the regular Administrative Courts?

Disputes arising from:

- municipal and community tax in general,
- mines and quarries,
- signs,
- the validity of municipal and community elections and elections for the administrative instruments of public entities,
- the liability of the government, the local government and public entities for compensation,
- any type of remuneration of staff in government agencies and local public entities in general,
- administrative contracts,
- public revenue collection,
- the granting and revoking of licenses for establishment and operation and sanctions during the operation of catering stores and workshops, and the temporary closure of the stores, offices, factories, workshops and in general professional facilities of traders, the issue of permits for the installation and operation of service stations, garages, car washes - car lubricating facilities and administrative sanctions for violation of the relevant laws.
- implementation of the legislation for the granting, revocation or withdrawal of vehicle circulation licenses and the enforcement of related sanctions, including those imposed by the Highway Code,
the determination of the operating conditions of public use vehicles (buses, trucks, passenger ships, tankers and others), the change of their seat, and any other relevant change,

the imposition of disciplinary sanctions on members of professional associations that operate as public entities,

the imposition of administrative sanctions for the violation of the rules and regulations of labour law and the legislation on health and safety at work,

the breach of the legislation on tourism enterprises,

the breach of the legislation on consumer protection,

the refusal to grant certificates or proofs of no debt to the State or social security for any reason,

tax offences, or debts to the State for any reason, the refusal to certify tax books and records, due to the non-payment of outstanding and due debt,

actions issued based on Community and national provisions concerning the payment of the Community aid provided for by the above provisions, subsidies and other cash benefits or the imposition of any relevant measure or sanction,

deeds for the concession of public spaces to the operators of stores for serving their operation, the issue of permits for outdoor trade and public markets,

the objections of third country residents to the decisions governing their stay in Greece,

the recognition, assignment or award of any right or privilege, or any other benefit under the legislation on social security,

disputes pertaining to the insurance coverage and any kind of benefits for the disabled, war victims, national resistance fighters, earthquake victims and victims of natural disasters,

the admission and situation in general of students of productive faculties of the above employees and changes in the status of reserve officers,

promotion of staff,

the election and the general conditions of service of professors and fellows of higher education and the implementation of educational legislation for pupils, university students, scholars and postgraduate students,

the revocation of urban planning expropriations, the revocation of urban planning restrictions, the regulation, ratification and discounting of compensation for property, the designation of buildings or structures as illegal constructions and their exemption from demolition, the issuing of building permits and permits for cutting trees, and the connection of buildings with all kinds of networks.

the issuing of permits for outdoor advertising and signs and the removal of illegal outdoor advertisements and signs and the imposition of fines,

the fines imposed by the Greek Independent Authorities for any reason, in particular by the Securities and Exchange Commission, the National Broadcasting
What matters are tried at the Council of State (CS)?
The CS hears, at first and last instance:
A) applications for the annulment of enforceable administrative acts by someone who has a lawful interest, in which case it may cancel the act or reject the application for annulment. Mainly, it hears cases concerning the protection of the natural environment, forests and woodlands, waters, flora and wildlife, the protection of the cultural environment, of antiquities and archaeological sites, monuments, listed buildings and traditional settlements, mines and quarries, the sea and beaches, zoning issues as well as issues on the approval, amendment and extension of city plans, general urban plans and planning studies, the imposition of conditions and restrictions for construction, the determination of active urban planning zones and urban land re-allotment, zones receiving special support and providing special incentives and residential control zones, other than those concerning building permits and deeds for the designation of constructions as illegal, issues relating to the establishment and operation of industries, factories and hotels in general and engineering facilities, and the organization and functioning of the administration, legal persons under public law, the local government and higher education establishments.
B) The recourse of civil, military, municipal, etc. officials against decisions of Official Councils on their promotion, dismissal, demotion, etc.
The CS tries, at second instance:
Appeals against final decisions of the Administrative Appeals Court, which are issued as defined in Article 1 of Law 702/1977, in the event of an application for annulment or opposition.
The CS tries, in its function as a Supreme Administrative Court, appeals against decisions of the regular Administrative Courts, in which a citizen has exercised a right to recourse against an administrative act.

How does a case reach the Administrative Courts?
After exercising one of the provided remedies (application for annulment, appeal, action, declaratory action, opposition to enforcement, application for the regulation of controversy over the validity and effect of legal rules) or one of the provided judicial means (appeal against the default judgement, opposition, appeal, review, process repetition and cassation) within the specific deadlines set for each one of these remedies or means, the parties are summoned by the Court at least 30 days before the hearing.
If the person has no known residence and there is no attorney, the service shall be made to the mayor or president of the community of his/her last known address of residence or correspondence.
The service of court documents to the Minister of Finance, as representative of the Greek government, is made to the Central Office of the State Legal Council for court documents addressed to the courts of Athens and Piraeus.
For tax disputes, service is made to the issuing authority of the document.
Subsequently, the administration compiles the administrative file to be sent to the court within 20 days before the hearing. Otherwise, the discussion is postponed if requested by the party.

How do parties attend the Administrative Courts?
The State is always represented by the Minister of Finance, with the exception of cases of tax disputes in general (government, customs, municipal) and signs, in which the State
is represented by the authority issuing the document and the Minister of Development, respectively. Public entities and private entities are represented by their legal representatives. Private parties may be present at the hearing without a lawyer:

- In the event of financial differences, when they do not exceed the amount of 586,94 Euros for the main tax.
- In the event of disputes relating to competition,
- In the event of disputes on insurance and its duration, and the contributions payable
- In the event of disputes on injunctive measures.

During the adjudicating of tax disputes, representatives of the State, public entities and the IKA may conduct procedural acts without a judicial power of attorney. The judicial power of attorney is given by oral statement at the trial of the presented party or the party’s legal representative and is recorded in the proceedings of the trial by deed or private document; therefore a certification of the authenticity of the signature of the person providing the power of attorney from any governmental authority is required, or the co-signature (by the lawyer) of the application by the party, in which case the co-signature of the lawyer is regarded as confirmation of the authenticity of the signature of the above person. A special power of attorney is required for court settlements, the waiver of judicial means or remedies, the challenge of documents as counterfeit and where else expressly provided. It is provided that the legal representative is also the attorney, if residing or working within the geographical jurisdiction of the court, as well as that the legal representative may appoint another legal representative.

Is it possible to postpone the hearing of a case?

Only one (1) time per instance, if there is good reason at the discretion of the Court. The hearing is necessarily postponed if any of the parties is not present, has not been legally summoned, at the request of the parties, which, although present, have not been legally summoned.

What are the fee and the judicial stamp?

The admissibility of the remedies and means must be documented by the submission, until the first hearing of the case, of a proof of payment of the fee. The fee for tax disputes is 2% of the dispute. Where the amount is determined by a notice, to be sent by the tax authority to the court secretariat, if this is not sent, 1% of the tax difference is paid and any further amount, if more than 3000 Euros, is allocated by the decision. The fee required to be paid for appeals and cross-appeals is 50% of the dispute. The admissibility of declaratory claims must be documented by the submission, until the first hearing of the case, of a judicial stamp. If this is not paid by then, the Court, by its decision, suspends the progress of the trial until it is paid. If this is not paid by the new hearing date, the claim is rejected as inadmissible. For claims of insured parties against the IKA and for income of any kind by employees of the state, local authorities, public entities, no judicial stamp is paid up to the amount of 6,000 Euros.
During processes in general before the CS, the provisions in force for duty stamps and special fees and stamps apply. The submission of the application initiating the proceedings of the trial and the legal fees are accompanied by the submission of the docket registration fees, and the proceedings and decision fees. If the application initiating the proceedings is submitted to a public authority, the fees can be submitted or sent by money order no later than one month from the receipt of the application by the Council. If the fees are not paid or sent in advance, the appeal is dismissed as inadmissible. In case of an application for suspension, the legal duty stamp for the decision are advanced, on penalty for refusal.

**What is temporary legal protection?**

Until the issue of a decision regulating the difference in a final manner, if certain conditions apply, the parties may be given temporary legal protection. This concerns the:

- Suspension of the performance of the administrative act.
- Suspension of the performance of the verdict.
- Temporary regulation of status.
- Interim adjudication of the claim.

**How is administrative enforcement conducted?**

The process for the compulsory recovery of claims from public revenue typically includes the following steps:

1. Proof of payment
2. Report of seizure
3. Schedule of auction
4. Report of auction
5. Ranking list
6. Seizure in the hands of third parties

Acts issued in the framework of this procedure may be challenged through the general remedy of the opposition, which is a special case of appeal. The opposition does not suspend the compulsory collection of debts, but the opponent requests the suspension until a final decision on the opposition. He also requests an injunction to suspend the execution until a decision on his application for suspension.

**How does the State comply with the decisions of administrative courts?**

Compliance is either incidental or positive. Incidental compliance means that the act that was cancelled is not performed or implemented. Such a case also applies to decisions providing temporary legal protection until a final decision. Positive means compliance through a positive action on the content of the verdict. The positive action is the restoration of affairs to their legal status as before the issue of the cancelled act.

In practice, the administration’s compliance with the decisions of administrative courts is now also achieved through the issue of payment orders against it. The administrated party submits a signed report to the “Ombudsman”, to cause the control of the administration due to its failure to comply with the court order.
What is the Court of Auditors?
Under Article 98 of the Constitution, the jurisdiction of the Court of Auditors pertains mainly to the control of the expenditure of the State and local government or other legal entities subject by a specific statutory provision in this scheme, the auditing of contracts of great economic value in which the State or person in lieu of this is a party, the auditing of the accounts of public officers and local authorities, the opinion on bills on pensions, the drafting and submission of reports to the Parliament on the annual report and balance sheet of the State, the litigation concerning the award of pensions and the audit of accounts and finally the trial of cases relating to the liability of civil or military officials.

What cases are heard before the Supreme Special Court?
The Supreme Special Court is a special court. Under Article 100 of the Constitution, it has special jurisdiction to judge the validity of parliamentary elections, the dismissal of MPs from their office or the resolution of conflicts between the three highest courts of the country. The Supreme Special Court should not be confused with the Special Court of article 86 of the Constitution, which hears cases pertaining to the criminal liability of Ministers. The SSC decisions are final and irrevocable, i.e. they cannot be challenged by any appeal. Its jurisdiction covers the control of the validity of elections and referenda, the ruling on incompatibilities or the dismissal of MPs, the resolution of conflicts regarding the jurisdiction of courts, the control of constitutionality, the resolution of conflicting decisions and the resolution of controversies regarding the generally accepted rule of International Law.
1. Sources of Law
The Greek Code of Criminal Procedure (GCCP) is the basic statute governing the procedure carried out before Criminal Courts. Numerous provisions of the Greek Constitution—which include directly applicable procedural law—as well as provisions of the European Convention on Human Rights and its Protocols and those of the International Covenant on Civil and Political Rights complement the GCCP provisions. The aforementioned international statutes have an eminent position within the Greek legal system prevailing over any conflicting provisions of national law after their enactment pursuant to Art. 28 (1) of the Constitution. As a member of the European Union Greece has ratified the EU-Treaties as well as Charter on Fundamental Rights.

2. How are the criminal courts in Greece structured?
Criminal Courts are organized following the triple division of offences in petty offences, misdemeanours and serious crimes (felonies) to: a) Petty Offences Courts, b) Misdemeanour Courts (One-Member or Three-Member First Instance Court) and c) Courts that handle serious crimes, which may be either Mixed Criminal Courts (composed of judges and jurors) or Multi-Member Courts of Appeal (hearing the case in first instance and composed of judges strictly). Mixed Criminal Courts hear serious crimes such as homicides, rape, sexual abuse of children etc. while Courts of Appeal for Serious Crimes hear serious felony charges relating to corruption, misappropriation of property, fraud, organised crime, etc. Areios Pagos is the highest jurisdiction that hears appeals by way of cassation against judgments of all criminal Courts.

3. How are criminal proceedings initiated?
Criminal proceedings are initiated by the Public Prosecutor of the First Instance Court. The Public Prosecutor opens criminal proceedings after receiving a notitia criminis, i.e., information that a criminal offence has been committed. The primary source of information is usually the person filing a criminal complaint stating the facts which constitute a criminal offence and the alleged perpetrators. The Prosecutor may also start criminal proceedings ex officio for any criminal offence of which he is informed by any other means e.g., other public authorities, the press etc. For certain offences such as those committed within families or offences which lack a strong public interest (e.g. non serious bodily harm, defamation etc.), filing a criminal complaint by the victim is a legal condition in order to initiate criminal proceedings.

4. What are the stages of criminal process?
The criminal process comprises two basic stages: 1) Pre-trial proceedings (preliminary inquiry, main investigation of offences, process of indictment), which are non-public and non-adversarial, and 2) trial proceedings, which are public, oral and moderately adversarial. Pre-trial stages are shorter in misdemeanour cases as opposed to felony charges (see below at 5 and 6).

5. The pre-trial stage in misdemeanour cases
After receiving a notitia criminis the Public Prosecutor orders a preliminary inquiry (in practice carried out by the competent Investigating Magistrates) aimed at collecting the evidence which would justify prosecution.
After conclusion of the preliminary inquiry, the Public Prosecutor decides to prosecute filing charges or to dismiss the case on the grounds that there is no evidence indicating that a criminal offence has been committed or on legal grounds. The decision to dismiss the case must be confirmed by the competent Prosecutor of the Court of Appeal. If the latter disagrees, he can instruct the Prosecutor with the First Instance Court to start prosecution. The dismissal decision of the Public Prosecutor with the First Instance Court is served on the criminal complainant. The complainant has the right to appeal before the Prosecutor of the Court of Appeal, who can confirm dismissal of the case or order prosecution.

In case the Public Prosecutor decides to start prosecution for a misdemeanour offence (or is instructed to do so) he refers the case to trial before the Misdemeanour Court issuing a Writ of Summons. This document is served on the defendant comprising the accusation, the trial date, the Court the defendant has to appear before, the witnesses to be examined at the Court hearing and the evidence to be introduced by the Public Prosecutor, etc. Foreign defendants receive also a translation of the summons in a language they understand.

In case the defendant is summoned before the Three-Member Misdemeanour Court, he has the right to appeal against this indictment by lodging an appeal before the Public Prosecutor of the Court of Appeal on factual or legal grounds.

6. The pre-trial stage in serious crimes
A preliminary inquiry is also conducted in cases of serious crimes. The Prosecutor, however, may not refer directly a felony case for trial after the closing of the preliminary inquiry but has to order a main investigation. The investigation is carried out by the Investigating Judge and aims at collecting all evidence, which is considered necessary for the Judicial Council to decide if a person has to stand trial. The Investigating Judge has to carry out the inquiry in rem and to involve all participants to the offence. Hence, he is entitled to examine witnesses, inspect places, order expert opinions, pre-trial detention etc. The main investigation is not completed without prior notification of the defendant.

After conclusion of the main investigation, the case file is forwarded to the Public Prosecutor. The latter submits a written and reasoned recommendation to the Judicial Council recommending the referral of the case to trial or the acquittal of the defendant(s). After having heard the Prosecutor, the Judicial Council issues a decision, which may follow or disagree with the Prosecutor’s recommendation. The Judicial Council following a request of the parties or ex officio may order the parties to appear before it in order to argue their case either in person or through their legal representatives.

In cases of specific serious crimes against the state property (Act 1608/50) the referral of the case to trial or the acquittal of the defendants lies within the competence of the Judicial Council of the Court of Appeal.

In certain categories of crimes such as robbery, drug trafficking etc., it is the Public Prosecutor with the Court of Appeal who decides on referral to trial issuing a Writ of Summons after receiving written consent by a Judge with the Court of Appeal. The Prosecutor of the First Instance Court is responsible for processing the case until the conclusion of the main investigation and then forwards the case file to the Public Prosecutor of the Court of Appeal.

7. Trial Proceedings
7.1. General Principles in trial proceedings
As already mentioned, the inquiry in Court is public, oral and moderately adversarial. According to Art. 93 of the Constitution and Art. 329 GCCP all trials on pain of nullity are held in public and all Court decisions are pronounced in public. The public character of the trial can be hindered only in order to protect public morals or the personal or family life of the parties.

The trial in Court must be oral and the Court's decision shall rely on the evidence which is heard during the trial. Witnesses are examined by the Court and the parties, all relevant documents are read out and the Public Prosecutor as well as counsel address the Court orally.
The inquiry in Court is of moderately adversarial character (see below at 7.2 and 7.3).

7.2. The Attendance of the Parties

The defendant, who is duly summoned, is under a duty to appear personally before the Court. However, he has the right to appoint defence counsel (no more than three) in order to represent him at trial.

In case of serious crimes, legal assistance is mandatory and the presiding judge officially assigns up to two members of the Bar to defend the accused who has not appointed counsel of his choice. The defendant may also request legal assistance before the Court hearing (Art. 340 GCCP). If the defendant’s presence is considered necessary, the Court has the power to order him to appear in person.

The defendant, who fails to appear in Court though duly summoned, is tried in absentia. The civil claimant is not under an obligation to appear in person and can choose to be represented by counsel; however, the Court may order him to appear in his capacity as a witness.

7.3. The Course of the Trial

The Court hearing starts with the announcement of the defendant’s name who is also informed by the President of the Court of his rights. At this stage the defendant may submit any objections to the trial proceedings on procedural grounds.

The following step is the examination of witnesses and experts who are questioned by the Court, the Prosecutor and the parties. All evidence is read out in Court so that the Court and the parties are fully informed. After the examination of the evidence it is the time for the defendant’s statement. He is called to answer the charges orally and shall not be interrupted. The defendant has the right to remain silent; however, as a matter of practice most defendants avoid making use of this right for tactical reasons. Only the President, the Court members and the Public Prosecutor are entitled to put questions to the defendant after his submission.

The defendant has the right to communicate with his counsel during the hearing but is not allowed to consult him before answering a question (Art. 366 GCCP).

The following step is the closing arguments of the Public Prosecutor and those of the counsel for the civil claimant and the defendant. The defendant and his counsel have always the right to speak the last word.

The Court retires to deliberate on the issue of guilt and returns its verdict in public. If the defendant is found guilty, the Public Prosecutor recommends the sentence to be imposed and the Court hears the defendant’s and his counsel’s submissions on this issue. The Court retires again to deliberate and pronounces in public its decision on the sentence.

8. Rules of Evidence

The presumption of innocence (Art. 6(2) ECHR) is a fundamental principle. In the Greek system, the burden of proof lies with the prosecution and the defendant is not under an obligation to disclose his evidence before trial. On the contrary, the Public Prosecutor must serve on the defendant a catalogue of the witnesses and documents to be examined in trial (Art. 326 GCCP). Moreover, the defendant benefits from any doubts regarding his guilt (in dubio pro reo).

The standard of proof for delivering a verdict is proof beyond reasonable doubt and the decision does not need to be unanimous.

Regarding the means of proof, every lawfully acquired evidence is in principle admissible and can be adduced before Court (Arts. 177, 178 GCCP). Investigating authorities and Courts as well have a duty to search for the factual truth (Arts. 177, 351, 357 GCCP) being entitled to initiate any investigating act with respect to any evidence considered necessary to reveal the truth.

Procedural law does not entail rules concerning the probative value of the various means of proof and all lawfully acquired evidence is in principle subject to the Court’s free evaluation.

Art. 178 GCCP mentions the most common means of proof: indices, inspection of persons, places and objects, expert’s reports, confessions, statements of witnesses and documents. Though the
defendant’s confession is considered to be strong evidence of his guilt, it is subjected, like all other evidence, to the Court’s judgment.

9. What is the legal position of the Public Prosecutor?

The Public Prosecutor is not a ‘judge’ stricto sensu but a Judicial Official executing the right to prosecute in the name of the State. His role is significant throughout the criminal proceedings, since no Court decision including those of the Judicial Council is valid without prior hearing of the Public Prosecutor. Although he represents the State, the Public Prosecutor is not under an obligation to support the charges in all circumstances and plead against the defendant. Though he is not technically a party to the proceedings, his procedural rights are balanced against those of the defendant and of the civil party.

10. What is the legal position of the defendant?

The Greek Code of Criminal Procedure (combined with the provisions of the Greek Constitution and the European Convention of Human Rights and its Protocols as well as the International Covenant on Civil and Political Rights which prevail over domestic law) provides a well developed system of defendant’s rights at the pre-trial as well as at the trial stage including the right to be informed of the charges in a language he understands against him and of his rights before being called to answer the charges, the right to receive copies of the case file and ask for adequate time for preparation of his defence, the right to remain silent or to submit a written defence statement, the right to appoint defence counsel from the very beginning of the police or judicial investigation, the right to be present at most acts of the investigation (not including the examination of witnesses), the right to legal aid, the right to request the examination of witnesses, etc.

At the trial stage the defendant has some further rights including the right to ask the Public Prosecutor to call witnesses he wishes, the right to examine witnesses and experts and to comment on all evidence submitted in the course of the trial, the right to defend himself in person or through his counsel, to have the last word, the right to appeal against a conviction etc.

11. What is the legal position of the civil party?

Under the Greek Code of Criminal Procedure a person can participate as a civil party if he has suffered material or moral damage resulting directly from the alleged criminal offence, e.g. the defamated person, the victim of the bodily harm, etc. The civil claimant is considered as an important party to the proceedings since he is vested with a wide range of rights, i.e., the right to counsel, the right to receive copies of the case file, to present evidence, to request investigating acts, to appoint experts on his behalf, examine witnesses at the trial etc.

12. Legal Remedies

What are the ordinary legal remedies against the decisions of judicial councils?

The defendant has the right to appeal against an inditing decision of the Judicial Council if he is charged with a serious crime only on specific procedural or legal grounds (Art. 478 GCCP) and within ten days after the decision has been served on him.

The Public Prosecutor of the Court of Appeal can appeal against all decisions of the Judicial Council in favour or against the defendant within one month (Art. 479 GCCP).

All aforementioned appeals are heard by the Judicial Council of the Court of Appeal. The appellate Judicial Council decides in camera as a three member council after hearing the Public Prosecutor, who files a reasoned written recommendation. The Judicial Council with the Court of Appeal has the power to quash, amend or confirm the decision.

Furthermore, the Public Prosecutor of the Misdemeanour Court has the right to appeal by way of cassation before Areios Pagos against a decision of the Judicial Council in favour or against the defendant in cases of indictment for a serious crime as well as in cases of acquittal or of provisional stay of the proceedings (Art. 483 GCCP). The same right is attributed to the Public Prosecutor of the Court of Appeal with respect to the decisions issued by its Judicial Council.
The Prosecutor of Areios Pagos has the right to appeal by way of cassation against all decisions (including preliminary ones) of any Judicial Council for an error of law within thirty days after issue of the decision (Art. 483 GCCP). After this period of time, he has the right to appeal by way of cassation in the interests of law against any decision of any Judicial Council for an error of law including the infringement of procedural provisions. The appeal by way of cassation in the interests of law does not affect res judicata in the case involved.

The errors of law which can sustain an appeal before Areios Pagos are mentioned exclusively in Art. 484 GCCP including infringement of procedural provisions on pain of nullity; erroneous interpretation or application of the relevant substantive criminal provisions; res judicata, failure to mention the relevant provisions of criminal law etc.

Areios Pagos sitting in camera as a three member council of its Criminal Section (Art. 485 GCCP) decides on the appeal after hearing the Public Prosecutor.

**What are the legal remedies against the decisions of the Courts?**

The defendant has the right to appeal against convicting decisions of all Courts under the terms set by Art. 489 GCCP, e.g., decisions of the Three-Member Misdemeanour Court may be appealed by the defendant, if he has been convicted to imprisonment exceeding five months or to a pecuniary sentence higher than € 1,500,00.

The Public Prosecutor has also the right to appeal convicting decisions under specific terms and time limitations either in favour or against the defendant. Acquittal decisions can be appealed against by the defendant only if the basis of the acquittal is remorse or if the decision’s reasoning contains assessments infringing unnecessarily his reputation (Art. 486 GCCP).

The Public Prosecutors of the Misdemeanour Court and of the Court of Appeal have the right to appeal against acquittal decisions of the Petty Offences and the Misdemeanour Courts in their judicial district.

Unanimous acquittal decisions of the Mixed Criminal Court or of the Court of Appeal for Serious Crimes cannot be appealed against.

An appeal by way of cassation before Areios Pagos can be lodged against decisions of the first instance Courts which cannot be appealed as well as against decisions of the Appellate Court (Art. 504 GCCP).

The defendant has the right to appeal by way of cassation against a conviction within ten days after the decision has been registered with the official Registry of the Court (Arts. 505, 473 GCCP). The Public Prosecutor of the Misdemeanour Court can appeal by way of cassation against convictions by the Court to which he is attached as well as against the aforementioned decisions of the One-Member Misdemeanour Courts and the Petty Offences Courts in his judicial district.

This right is provided for the Public Prosecutor of the Mixed Criminal Court with regard to such decisions of said Court to which he is attached. The Public Prosecutor of the Court of Appeal can appeal by way of cassation convictions by the Court of Appeal, the Mixed Criminal Courts and the Misdemeanour Courts in his judicial district.

The Prosecutor of Areios Pagos can appeal by way of casation against any decision (including preliminary ones) of any Court within thirty days after its pronouncement (Art. 505 GCCP). After this period of time he can lodge an appeal by way of cassation only in the interests of law.

The defendant can appeal by way of cassation against an acquittal decision only if he has been acquitted on grounds of remorse after the criminal offence (Art. 506 GCCP).

The Public Prosecutors of the Courts mentioned above have said right against acquittal decisions only for erroneous interpretation or application of the relevant substantive criminal provisions (Art. 506 GCCP).

An appeal by way of cassation is also provided for the defendant and the Public Prosecutor against the decision of a Court which declined its competence ratione materiae and referred the case to the competent Court, if the said decision cannot be challenged before an Appellate Court (Art. 504 GCCP).
Areios Pagos considers only errors of law mentioned exclusively in Art. 510 GCCP: infringement of procedural provisions on pain of nullity in the course of the trial; violation of the public character of the trial hearing; lack of sufficient reasoning of the Court’s decision, etc.
Areios Pagos quashes the appealed decision and depending on the error of law will refer the case for a new trial before the competent Court, terminate the proceedings or acquit the appellant.

13. Statute of Limitations
Criminal prosecution shall not start or continue if the offence in question is time barred. Prosecution of serious crimes is barred after 15 to 20 years from the commission of the offense, misdemeanours after 5 years and petty offenses after one year (Art. 111-116 of Greek Criminal Code). The limitation by time is suspended for five years in cases of serious crimes, for three years in cases of misdemeanours and for one year in cases of petty offences only while the case is pending before a Court.

14. Extradition and Judicial Assistance
Greece has ratified numerous multilateral and bilateral Treaties regarding extradition and judicial assistance in criminal matters, the most important of which are the European Convention on Extradition of 13.12.1957 (Law 4165/961) and the European Convention on Mutual Legal Assistance in Penal Matters of 20.04.1959 (Legislative Decree 4218/1961).
Provisions setting out the guidelines for extradition of suspected or convicted persons to another nation and mutual assistance in general can also be found in the GCCP (Arts. 436-461), which are applicable in supplement.
With Law 3251/2004 Greece implemented the Framework Decision of 2002 on the European Arrest Warrant, which introduced a new process increasing the speed and ease of extradition throughout EU.
What are the advantages and disadvantages of arbitration?

Arbitration is a form of alternative dispute resolution practised by judicial bodies which differ from the ordinary civil courts, excluding the jurisdiction of the latter. Amongst the greatest advantages of arbitration is flexibility. Arbitration gives parties the freedom to decide on all aspects of the arbitration process such as seat, arbitrators and award issuing method, with the sole limitation being to observe public policy rules. As a general rule, the award is issued by experienced professionals, who are familiar with the peculiarities and the nature of the dispute. Privacy is another great advantage of arbitration over litigation. Arbitration can offer confidentiality with regards to commercial and professional secrets. Finally, arbitration dispute resolution is usually a lot quicker in comparison to court proceedings.

A relative disadvantage is that arbitral awards are not binding for third parties, not joined to the arbitration. In addition, many point out the expense associated with the arbitration process. However, arbitrators are generally remunerated according to the value of the case and the parties do not pay court fees on the amount in dispute.

What is arbitration’s field of application according to the Greek Code of Civil Procedure (CCP)?

In principle, the CCP regulates the so-called domestic arbitration, where no extraneous elements are present. On the other hand, international commercial arbitration is governed by Statute No. 2735/1999 under which Greece adopted UNCITRAL’s Model Law on international commercial arbitration. The CCP is applicable for international arbitrations usually on an ancillary basis, if an issue is not directly regulated by Statute No. 2735/1999.

What types of disputes may be submitted to arbitration?

Both existing and future private disputes resulting from a legal relationship can be referred to arbitration. By the same token, material damages claims in tort cases may be subject to arbitration proceedings.

Consequently, disputes resulting from public-law relationships and administrative claims cannot, in principle, be referred to arbitration. Also, it is expressly prohibited by law to resort to arbitration in employment disputes, in disputes relating to public order (ex. disputes concerning trademark acquisition) or in cases inextricably linked to the protection of human personality (ex. compensation for non-material damage).

Regarding public-private contracts for public works, the law stipulates that arbitration may be agreed upon in disputes arising from the performance of such contracts. Similarly, if stipulated by law, tax-related disputes may also be resolved by arbitration.
Finally, arbitration is not a valid dispute resolution method in cases concerning voluntary jurisdiction (such as child adoption).

How is an arbitration agreement drawn up and what may it include?

Both natural and legal persons may enter into arbitration agreements. All persons agreeing to arbitration must have the legal capacity and the right to dispose of the object of arbitration. In principle, the arbitration agreement must be in writing, either in a separate contract or in the main contract. The arbitration clause does not have to form part of an official document (e.g. private contract). Simply exchanging signed letters, telegrams, faxes etc. is sufficient to establish an arbitration agreement.

The law does not stipulate a minimum content for the arbitration clause. A simple statement referring disputes to arbitration shall suffice. Any unspecified condition is usually accounted for by the Code. However, because one of arbitration’s greatest advantages is precisely the freedom for the parties involved to use their own initiative, it is often preferable to provide at least for the main details of the process.

How are arbitrators appointed and revoked?

Any natural person with legal capacity that is not deprived of his/her civil rights can be appointed arbitrator.

There may be one or more arbitrators. Sole-arbitrator tribunals offer higher speed in issuing an award and are less costly. However, multiple-member arbitral tribunals offer greater assurance as to the impartiality of the award issued.

In multiple-member tribunals, both parties appoint an equal number of arbitrators. As a rule, there is also an umpire, who is either provided by the parties in the arbitration clause, or otherwise is appointed by the arbitrators. The parties may choose to exclude the umpire figure from the arbitration clause or to establish certain conditions for the use of thereof, but it is generally not preferable to exclude the appointment of an umpire.

As to magistrates and prosecutors, they are selected from a list by the President of the Court of First Instance and must have at least 5 years of experience. They can either be the sole member of an arbitral tribunal, or umpires. It is forbidden by law to directly name or indirectly suggest a particular judge in the agreement.

There are three appointment methods for arbitrators and umpires:

a. By agreement of the parties. This constitutes one of arbitration’s major attractions since the parties can expressly name the arbitrators (given that these are not magistrates). If no appointment method is provided in the agreement, each party has the right to call the other to appoint arbitrators within a period of eight days, while at the same time notifying their own arbitrator(s) of their appointment.

b. Directly by law. If there is no agreement as to the number of arbitrators, each party shall choose one arbitrator and call the other party to choose an arbitrator too, as above.

c. By court order, in cases where it is impossible to appoint arbitrators by mutual agreement or by law. The Single-Member Court of First Instance of the arbitration’s seat, or otherwise of the applicant’s address, or otherwise of the state’s capital issues a decision, on application filed by any one party, or by the arbitrators if it concerns the umpire’s appointment.

There are three ways of revoking the arbitrators’ authority:
a. Revocation. Until the arbitral award is issued, and only jointly, the parties may file an application to the Single-Member Court of First Instance asking the arbitrators’ revocation for serious or less serious reasons. Nevertheless, in the absence of significant reason, the parties shall remunerate the arbitrator for his actions until the time of revocation.

b. Exemption. In case new circumstances raise doubts as to the arbitrators’ neutrality. The latter have duty to notify any impediment to their impartiality. Other than that, there are several reasons for exemption, namely family relations to the parties, paid employment relationship to the parties, etc. The application for exemption is filed to the Single-Member Court of First Instance, either by the arbitrators or the umpire, as well as by any of the parties.

c. Resignation. Once an arbitrator has accepted office, s/he can revoke acceptance only for serious reasons (e.g. health reasons) and by leave of the court.

**What are the Permanent Arbitration Boards?**

The CCP provides for the possibility of establishing, by decrees, arbitration organisations called permanent arbitration boards in chambers, stock and commodity exchanges or professional associations. After special agreement of the parties within the arbitration clause, such organisations may conduct the arbitration.

While arbitration organisations are governed by the CCP, decrees may provide for different types of disputes subject to each organisation’s jurisdiction, the seat of arbitration etc.

Thus, to this day, arbitration organisations have been established in Bar Associations across the country, the Technical Chamber of Greece, in Professional, Commercial and Industrial Chambers as well as the Stock Exchange etc.

**How to make an arbitration claim.**

Contrary to international arbitration, in domestic arbitration there is no single rule governing the commencement of arbitral proceedings. Ways of beginning arbitral proceedings vary depending on whether the parties decide to use an arbitration organisation or not. Usually, arbitration starts with the filing of an arbitration claim, including an action, by the interested party. Otherwise (e.g. at the Commercial and Industrial Chamber) a simple arbitration claim including a summary of the dispute shall suffice.

**How are remuneration and expenses determined? Who pays them and when?**

The CCP sets the minimum remuneration for the arbitrator and the umpire, if the disputed item is financially quantifiable and if the appointed arbitrator is a magistrate. Otherwise, remuneration is determined by the arbitral tribunal according to what appears fair and reasonable. The party that initiates the hearing advances half of the remuneration. In exceptional cases a 50% cut on the remuneration and the advance payment may be granted. 20% of the remuneration is paid to the financial fund for the court premises, though this percentage and related deductions shall differ in case a magistrate is appointed arbitrator. The law provides for the possibility of making a claim against the arbitral provision which stipulates remuneration and expenses.
Is there a deadline for issuing an arbitral award?

The period for issuing the arbitral award may be fixed by the agreement of the parties and may be either indicative or peremptory. This agreement is independent of the agreement referring disputes to arbitration, unless the parties decide that the agreement’s termination shall coincide with the expiration of the deadline for issuing an award. If there is no agreement for a peremptory period, the competent Court of First Instance shall set a reasonable and fair time-limit for this purpose.

When does the arbitration agreement terminate?

The arbitration agreement may provide the time and way of its termination. If not, in principle, the agreement terminates by agreement of the parties in writing. Termination may also occur for reasons concerning the arbitrators (death, refusal to accept appointment, absence of replacement or method to appoint one, impossibility to provide the arbitral services). Furthermore, termination may occur in case of a delay in conducting the arbitration or issuing the award, or if the agreed deadline for issuing an award has expired, if no extension has been made. If there is no such agreement, the arbitration agreement terminates with the expiration of the deadline set, upon request, by the competent Court of First Instance. Furthermore, the arbitration agreement may also terminate for general reasons for which substantive law contracts terminate (e.g. change of circumstances, repudiation of agreement, right abuse, annulment because of error, fraud or threat etc.). Finally, the agreement terminates when the arbitral award is issued, having served its purpose. However, an arbitration clause remains in force since it extends to future disputes.

The arbitral procedure.

The arbitral procedure is set out by agreement of the parties. The agreement in question is independent of the arbitration agreement, and is not required in written form. The CCP provides for some mandatory judicial prerequisites, namely compliance with the principle of equality and the right to be heard. If there is no agreement as to the procedure to be followed, this is determined by the arbitrators, who have the right to use any rules (including foreign rules). The parties appear in person or are represented by a lawyer. If a party is called to participate and fails to do so, the arbitration will take place in their absence. Arbitrators shall determine their jurisdiction. Arbitrators cannot impose penalties or order compulsory measures for the submission of evidence, except if the arbitrator is a state court. Arbitrators can refer the taking of evidence to the Court of the Peace. The arbitrators cannot order, reform or revoke interim measures. If, after an interim measure is taken, the law or the court requires that the action be brought within a specific time-limit, the claimant must cause arbitral proceedings to start within the given time-limit, or the interim measure is withdrawn.

Law applicable to arbitration.

The agreement of the parties determines the applicable law. It can be a foreign law or the common practices of a particular field. In the absence of an agreement thereof, the
dispute resolution obeys the enforced substantive law. The parties have the right to relieve the arbitrators from the obligation to apply the substantive law, allowing them to judge according to what is fair and just.

How an arbitral award is issued?
Unless otherwise agreed by the parties, an arbitration panel shall decide jointly by majority vote. If a majority cannot be reached the umpire’s decision prevails. The arbitral award is complete after the arbitrators sign it. The original award document shall be submitted to the Court of First Instance, if not stated otherwise, and all interested parties will receive a copy. In line with the flexible nature of the arbitration process, for the delivery of the arbitral award a bailiff is not required.

What effects does the award have?
The arbitral award is binding for the parties. If its delivery is complete and there is no pending action or claim against it or defect giving grounds for its declaration as inexistent, it will have the same effects as a final court judgement. In particular, a) primary effects, namely res judicata status and enforceability and b) secondary effects between the parties, e.g. the arbitral award can serve as a title to raise a mortgage.

Is the arbitral award subject to appeal?
The arbitral award is not subject to any ordinary appeal or exceptional review procedure. A special agreement can provide for the possibility of recourse to other arbitrators against the arbitral award, with the aim of re-arbitrating the dispute rather than conducting a second-level review of the arbitral award. In such a case, the time-limit, conditions and hearing method of the appeal must be agreed, no later than the award issuance date.

Can the arbitral award be annulled?
The right to annulment is given exclusively for the reasons provided by the CCP. In particular: a) for reasons concerning the arbitration agreement (agreement nullity and termination), b) for reasons concerning the arbitral tribunal (illegal composition or constitution and excess of power), c) for reasons concerning the arbitration procedure (breach of the principle of equality or the right to a fair hearing or procedural defects, namely infringements in the method of issuing, drafting and signing the award, unintelligibility or inclusion of contradictory provisions), d) if the award is contrary to Greek public order or moral values, e) for all the reasons of review provided under Article 544 of the CCP, as interpreted through the flexible scope of arbitration.

How is the annulment action brought and what effects does it have?
It is brought before the Court of Appeal of the region where the court judgement was issued, within three months of the notification and it is heard according to the special
proceedings for labour disputes. Especially when brought for the reasons laid down in Article 544 of the CCP, there is a 60-day delay if the claimant is Greek resident and a 120-day delay if the claimant resides in foreign territory or his/her residence is unknown. The delay period starts running varyingly according to the reason triggering the review, as laid down in Article 545 of the CCP. Three remedies are applicable against the Court of Appeal's decision: setting aside default judgement, review and appeal. Because bringing an annulment action does not suspend the enforcement of the arbitral judgement, it is possible to request suspension to the competent court, according to injunction proceedings.

Can the arbitral award be declared inexistent?
Yes, either by objection or by independent action, exclusively for the reasons provided in the CCP, namely:
- there was no arbitration agreement,
- the arbitral award was issued in relation to a matter that could not be subject to arbitration proceedings, or
- the arbitral award was issued against a non-existent natural or legal person.
The action is brought, as above, before the Court of Appeal of the region where the judgement was issued. Bringing the action does not suspend the enforcement of the arbitral award.

KOUVELA-PIQUET & ASSOCIATES

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  Eleni DASKALAKI, LL.M.
Introduction

When you are doing business in Greece you can rely on a well regulated two-track Alternative Dispute Resolution mechanism that delivers services both in the Court-connected as well as in the outside of the Court scheme. The Greek legislation has some special features and features you need to be aware of to ensure that you can make most out of what these procedures can offer you.

It is essential to be taken into consideration that the Greek legislative authorities at present elaborate several amendments to the Greek Code of Civil Procedure (CCP) aiming to optimize ‘Access to Justice’ and inter alia to introduce judicial mediation in the Court-connected scheme. An updated version of the present chapter incorporating the relevant amended legislation is to be posted in due time at the publisher’s Website.

What forms of Alternative Dispute Resolution are regulated by Greek legislation?

There are specific dispositions in Greek Law that regulate several ADR processes, such as Conciliation, Judicial/Court-Settlement and Mediation for resolving disputes in an amicable, cost-effective as well as time-effective way.

When and how does a Conciliation attempt take place?

According to the provisions of the CCP (Article 214A of CCP), after the occurrence of lis pendens and until a final decision is reached, litigants may attempt to reconcile through negotiation efforts regardless of the standing stage of the trial and by acting out of its proceedings with or without the engagement of a third person.

What follows if negotiation efforts succeed and result to an agreement?

The Minutes of the agreement should be recorded in writing and undersigned. A litigant can unilaterally submit the original undersigned Minutes to be ratified by the judge or presiding judge before whom the case is pending. Ratification is given provided that the judge ascertains that: a) the dispute qualifies for settlement by means of a compromise, b) Minutes have been lawfully undersigned and c) the nature of the right which was acknowledged, as well as the amount of the consideration due and the terms of its fulfillment clearly arise out of submitted Minutes. Following the ratification process and depending on the nature of the claim Minutes accordingly constitute an enforceable title or merely evidence of entitlement and result in abolition of proceedings.

What kinds of disputes are addressed through the Judicial/Court-Settlement and how is it conducted?

Disputes of private law nature that are qualified for settlement by means of a compromise and that are heard with all/both parties present can be resolved through
a Judicial/Court-Settlement. This is a Court-based Settlement procedure that is initiated and facilitated by the sitting Judge/s and is specifically regulated and provided for all Court hearings under the provisions of the Code of Civil Procedure (article 233 of CCP). This procedure can be initiated after the commencement of the hearing of the case and at every stage of the trial until a final decision is reached. The attempt for a settlement can be continued at a subsequent day and at another place within the competent Court’s premises or it can be adjourned restrictively, only once, and for the forthwith next Court’s hearing before the same synthesis. According to another disposition of CCP (Article 208) Magistrate Judges at all Courts of Peace have the duty to attempt settlement before the first hearing of every case. Furthermore, they are entitled to refer the case to another Magistrate, even from another prefecture, if they believe that this would be appropriate for the likelihood of a successful resolution.

What if the Judicial/Court-Settlement does not succeed? Does it affect the process?
If the attempt is unsuccessful, CCP provisions dictate that this event has no effect to the trial’s outcome and all judicial remarks and proposals, as well as parties’ positions and recessions expressed for the sake of the attempt, are disregarded by the court while making their decision.

Is there any form of Court-connected facilitated amicable dispute resolution process prior to litigation?
There is a specific disposition by the Code of Civil Procedure (article 209 et seq.), that provides interested parties with the possibility, prior to bringing an action before the rule of Court, to submit an application before a Magistrate Judge of the competent Court with local jurisdiction, requesting their conciliatory intervention, not only in cases being of their ratione materiae competency, but also in cases which are of the ratione materiae competency of higher Courts.

Is there any form of Out-of-Court facilitated amicable dispute resolution process prior to litigation?
Mediation is a dispute resolution procedure whereby parties involved to a dispute may have the additional advantage to recourse to it also prior to filing a case before a Court. As explained in detail below Mediation may also take place after a litigation is initiated and at every stage of the trial until final decision is made.

What is the legal framework of Mediation in Greece?

What is the definition of Mediation?
Mediation is a structured process, regardless of how it is named or referred to, whereby two or more parties to a dispute attempt to reach a voluntary settlement agreement with a mediator’s assistance. This definition excludes any (aforementioned) attempts to
settle the dispute made by a Magistrate Judge or a Judge, pursuant to Articles 208 et seq and 233 of CCP, in the context of judicial proceedings and is conducted out of the Court’s premises and at a private provider. (Article 4b)

**What is the definition of Mediator’s role?**

A Mediator is a neutral third body that meets the specific qualifications required by the relevant legislation (Mediation Law, Presidential Decree and specific Ministerial Decisions of the Greek Ministry of Justice, Transparency and Human Rights (MoJ)) and who is asked to conduct Mediation in an effective, impartial and competent way, regardless of the way in which it has been appointed or requested to conduct the mediation. (Article 4c)

**Who is qualified to be a Mediator under the provisions of the Greek Law? Where can you find your Mediator?**

Mediations in domestic disputes can only be conducted by lawyers that have been trained adequately, assessed accordingly and have been accredited as Mediators by the Administration Directorate General of the Greek Ministry of Justice, Transparency and Human Rights. The MoJ forms a Panel with a list of the names and short bios of all registered and licensed Mediators that can conduct mediations in Greece. This Panel is distributed to all Courts and is also posted at the Ministry’s of Justice Website. Mediations in cross-border disputes can be conducted by accredited Mediators who come from various professions and are not exclusively lawyers. (Article 4c & 7)

**What type of disputes may be submitted to Mediation according to Law 3898/2010?**

Disputes under private law can be submitted to mediation provided that the parties involved are entitled to freely dispose the object of the dispute and settle by any means of a compromise.

Furthermore, the Greek Law on Mediation implements the EU Directive 2008/52/EC ‘on certain aspects of mediation in Civil and Commercial Matters in cross-border disputes’ of the European Parliament and the Council and its scope also explicitly covers all civil and commercial cases in cross-border disputes within the EU except from rights and obligations which are not at the parties disposal under the relevant applicable law. Mediation Law shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the state for acts and omissions in the exercise of State authority (acta iure imperii).

**How does Recourse to Mediation take place?**

Recourse to Mediation can take place as follows:

When the parties have agreed in writing to mediate under a mediation clause by means of a commercial contract before a dispute arises. Nevertheless, due to the importance of the parties’ voluntary submission to mediation and in order to increase the likelihood of a successful outcome, it has been considered that the above agreement to Mediate should be confirmed once the parties decide to recourse to mediation. Such an agreement is governed by civil law provisions on the law of contracts. At every stage of litigation at which point the parties have agreed in writing to mediate.
When, after parties’ compliance with Court’s invitation to mediate, the hearing of the case is postponed by written notice in Court’s Minutes. In such case, Court is obliged to postpone the hearing of the case for a minimum of three (3) and up to six (6) months period.
When ordered by another EU member state’s Court.
When national law mandates it. (Article 3)

How is Mediation procedure structured?
The Law on Mediation draws the general lines of a very open framework where the parties, along with the Mediator, can work together in consultation, on the basis of voluntariness, making an effort to resolve their issue and reserving their right to put an end to the Mediation at any time. There are strict provisions only with regard to confidentiality, the prohibition of keeping records and the restrictions in communicating each party’s information during his/her meetings with them without their consent. Procedure is structured in a customary way depending on the parties and the needs of the issues to be resolved. (Article 8)

How is Mediation procedure initiated?
On the acceptance of his/her instruction the Mediator draws up a Mediation Agreement with specific rules regarding breach of confidentiality and the range of the confidentiality issues that are covered, unless otherwise agreed by the parties. Confidentiality can be agreed even on the content of the agreement of settlement if ever reached, unless its disclosure is necessary for the enforcement of the Agreement. Mediation Agreement determines the whole process and after been signed up before the beginning of the mediation initiates the procedure. (Article 10 par.1)

How will Confidentiality be ensured? What are the exceptions?
Certain provisions of the law on Mediation require that Mediators, parties, their lawyers/representatives and any other person involved in the mediation process are not to be summoned as witnesses, nor may they be compelled to produce evidence in any subsequent judicial or arbitration proceedings. It provides, however, for an exception to its prohibition for public policy reasons and in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical integrity of a person. (Article 10 par. 2)

Should the parties participate along with their lawyers at a Mediation session?
It is mandatory and hence Mediation cannot take place unless parties or their legal representatives (for legal entities) proceed to mediation with their lawyers throughout the duration of the procedure. (Article 8 par. 1)

What is the definition of a cross-border dispute?
A cross-border dispute within the EU shall be one whereas at least one of the parties involved is domiciled or habitually resident in a Member State other than that of any other party on the date on which: (a) the parties agree to use mediation after the dispute has arisen; (b) mediation is ordered by Court; (c) an obligation to use mediation arises.
under national law; or (d) for the purposes of the likelihood of settlement Court invites the parties to try mediation. For the purposes of limitation periods and the purposes of confidentiality (below) a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in the previous paragraph under (a), (b) or (c). (Article 4)

Is Mediation mandatory prior to Court’s hearing?
For the time being there is not such a provision within the Greek Law that mandates disputants to try mediation prior to filing their cases, neither are there any sanctions for not using it before or after the judicial proceedings with regard, in particular, to their omittance to comply with the Court’s invitation to mediate. However, there are set provisions (as mentioned above) for cross-border cases and future laws that may impose mandatory aspects.

What is the impact of having recourse to mediation on judicial proceedings?
Recourse to Mediation excludes temporarily and until the end of the mediation process any judicial proceeding. It is determined by Mediation Law that limitation or prescription periods for a claim subject to mediation shall cease to run during mediation proceedings initiated by recourse to mediation. In the event of the mediation being terminated without a settlement agreement, the limitation and prescription periods shall continue to run from the moment the mediation proceedings are terminated. To that respect the Mediation shall be terminated as follows: by a written statement from the mediator to the parties stating that the mediation has ended unsuccessfully, by a written statement from either party to the other party and to the mediator stating that it withdraws from the mediation or by any other way of abolition of the mediation. (Article 3 par.1 & Article 11).

Issues in enforcing the Mediation Settlement Agreement. Is it enforceable in court?
In the event of a Mediation successfully leading to a Settlement, the Mediator draws up a mediation agreement record, which should contain the following:
The Mediator’s full name; the location and time of the mediation meeting; the full names of the participants; the agreement to mediate upon which the mediation session was based; the agreement reached.
At the end of the Mediation session, the mediation agreement record is signed by the mediator, the parties and their lawyers. The original agreement can be submitted by the Mediator unilaterally, upon the request of one of the parties, to the Secretariat of the Court of First Instance of the local jurisdiction where the Mediation took place. Once submitted in this manner, the mediation agreement becomes enforceable. (Article 9).

What is the cost of Mediation?
A mediator cannot charge an hourly fee for more than 24 hours of work. The 24-hours fee ceiling also includes time spent for preliminary mediation preparation. The parties and the Mediator can agree on a different structure of charging. The hourly rate of a
Mediator is defined by a decision of the Minister of Justice, Transparency and Human Rights. Unless the parties agree otherwise, each party is obliged to pay half of the mediator’s fee, and each party pays his or her own attorney’s fee. (Article 12)

What are the advantages of initiating Mediation in Greece?
Greek law provisions are mainly focused on ensuring high protection for parties’ interests in Mediation in five main directions: In terms of wide range of confidentiality, limitation and prescription periods, taking measures to ensure mediator’s quality and professional competence, rapid and unilaterally submitted enforcement of settlement agreements and reasonable cost.
ENFORCEMENT OF FOREIGN JUDGMENTS

Can judgments from any country be enforced in Greece?

YES. Foreign judgments can be enforced in Greece irrespectively of the country where they have been issued. This can be done by virtue of EU law instruments for the judgments emanating from other member states, by virtue of bilateral conventions and by virtue of the Greek Code of Civil Procedure for the rest of the world. It should be noted that under Greek law, enforcement is different to recognition which takes place automatically without any particular procedure, provided that the relevant reasons of non-recognition of Greek law are observed (largely similar to the ones on enforcement presented herein). The above distinction is central in Greek law.

ENFORCEMENT OF JUDGMENTS FROM OTHER EU MEMBER STATES

Which is the enforcement system for judgments emanating from other EU member states?

Greece is party to all EU regulations in the field of “judicial cooperation in civil matters”. A large number of these regulations are important to international business transactions. Among them rank Regulation 44/2001 of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I), Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European Order for Payment procedure (we refer to this regulation as well even though the “payment order” is not a “judgment” as such), Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims and Regulation 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure. This means that judgments as well as payment orders issued in other member states will be enforced in Greece under the provisions of these regulations and provided that they fall in their field of application.

What are the reasons of non-enforcement of intra-EU judgments and payment orders from other EU member states? How are the foreign judgments challenged?

Reasons of non-enforcement are strictly the ones mentioned in the above Regulations. Under Brussels I Regulation these are included in articles 34 and 35 (applied together with article 45 as regards enforcement). Article 34 contains provisions on non-enforcement in case of violation of the Greek (and EU) public policy/ ordre public (point 1), the right of the defendant to challenge the foreign judgment, in case it was given in default of appearance and the defendant was not served with the action in sufficient
time and in such a way as to enable him to arrange for his defence (point 2) and in case of existence of an irreconcilable judgment in the country of enforcement regarding the same dispute between the same parties (points 3 and 4). Article 35 par. 1 contains provisions on non-recognition/ enforcement, in case that the provisions of Sections 3, 4 or 6 of the Regulation were not observed, namely in case that the issuing Court was not competent under the Brussels I Regulation provisions to hear a case on insurance or consumer contracts or a case that under the same Regulation is subject to the exclusive jurisdiction of some other Court.

As regards the remaining Regulations mentioned in the above paragraph, there is hardly any room for non-enforcement, since, to the extent that these Regulations contain relevant provisions, they are applied exceptionally.

How are the reasons of non enforcement under the Brussels I Regulation applied by the Greek courts?
Generally, Greek courts are very careful with the application of the provisions for non-enforcement of foreign judgments under Brussels I Regulation. To our knowledge, there are very few judgments that have denied enforcement of other EU member states in Greece and they are limited to the ones of art. 34 of Brussels I Regulation.

What is the procedure of enforcement in Greece by virtue of the EU regulations?
Under Brussels I Regulation, foreign judgments will be filed with the Monomeles Protodikeio (One Member First Instance Court) and the relevant judgment will be issued ex parte on the basis of the documents provided by the claimant. If the defendant wishes to challenge this judgment, it will have to file an appeal before the Efeteio (Court of Appeal) under art. 45 Brussels I Regulation. It is only before the Efeteio where a full hearing will take place. The points that will be decided by the Efeteio will be any of the ones of arts 34 and 35 par. 1 of the Brussels I Regulation mentioned above, to the extent that they shall be pleaded by the defendant. No révision au fond is allowed (art. 36) and the jurisdiction of the foreign court cannot be questioned (art. 35 par. 3), save for the matters included in par. 1 of art. 35 mentioned above. Finally, the judgment of the Efeteio can be challenged before the Areios Pagos (Cassation Court).

ENFORCEMENT OF JUDGMENTS FROM NON-EU MEMBER STATES
Can foreign judgments be enforced in Greece on different legal bases, such as International Conventions?
YES. Greece is party to a number of bilateral International Conventions which include provisions on the enforcement of judgments. More particularly, Greece has signed and ratified International Conventions in this field (or in a wider field such as judicial assistance which include provisions on enforcement) with Austria, Armenia, Albania, Bulgaria, China, Cyprus, Czechoslovakia - now in force for the successor states, Germany, Georgia, Hungary, Lebanon, Poland, Romania, Russia, Syria, Tunisia, Ukraine, United Kingdom, USA, Yugoslavia - now in force for the successor states. Further, Greece is party to a number of Multilateral Conventions such as Brussels Convention of 1969 on civil
liability for oil pollution damage (other multilateral conventions where Greece is party to are limited in the field of family law and maintenance obligations).

What is the case with judgments issued in a non-EU member state or in a country with which Greece has not entered into an International Convention?

Enforcement is possible under the Greek Code of Civil Procedure articles 904 seq.

Is enforcement in Greece easy under the Greek Code of Civil Procedure?

Greece had adopted a very liberal system, not only as regards the country of origin of the judgment but also as regards the reasons of non-enforcement. More particularly, for the countries which are not members of the EU and have not entered into bilateral conventions with Greece, enforcement is possible under the Greek Code of Civil Procedure. Under art 904 point στ) of the Code of Civil Procedure, foreign titles (the term includes judgments) are enforceable in Greece, provided that they are declared enforceable in Greece by the competent Monomeles Protodikeio, as per art. 905 of the Code of Civil Procedure.

What are the reasons of non-enforcement under the Greek Code of Civil Procedure?

Under art. 905 of the Code of Civil Procedure, it is required that a foreign judgment must be a title of enforcement in the country of issuance in order for it to be enforceable in Greece under the provisions of the Code of Civil Procedure. Further, a foreign enforcement title will not be enforced in Greece if it violates the Greek ordre public (art. 905 par. 2) or if the conditions of art. 323 points 2-5 are not met. In that article, which contains the defences to recognition of foreign judgments, it is mentioned that the recognition (and by virtue of art. 905 the enforcement only as regards points 2-5) of the foreign judgment will be allowed only in case that it is res judicata in the country wherefrom it emanates (point 1) and certain requirements are met. More particularly it must be that following the “mirror principle”, the foreign court was competent to hear the particular case on the basis of the Greek International Procedural Law (point 2), the defendant who lost was not deprived of its rights to a fair trial, unless this was done on the basis of the applicable foreign procedural law which does not discriminate in favour of its nationals (point 3), the foreign judgment is not irreconcilable with a Greek judgment on the same dispute which is res judicata in Greece for the same parties (point 4).

What is the particular enforcement procedure under the Code of Civil Procedure?

The Monomeles Protodikeio hears the case and issues a judgment after taking into account the defence (if any) of the defendant, such defence been based on the above reasons of non-enforcement (art. 905 par. 1). The Efeteio is competent to hear any ordinary appeal to the judgment of the Monomeles Protodikeio and Areios Pagos is competent to hear any extra-ordinary appeal (only on points of law). Given that révision au fond is not possible, the control by the Efeteio and the Areios Pagos will be limited in practice to the same issues presented in the previous paragraph.
What is the approach of the Greek Courts as regards enforcement under the Greek Code of Civil Procedure?

Generally, Greek Courts are very careful with the application of the provisions for non-enforcement of foreign judgments. To our knowledge, there are rather few judgments that have denied enforcement in Greece, mostly on *ordre public* grounds.

**ENFORCEMENT OF FOREIGN AWARDS**

Can arbitral awards issued in any country be enforced in Greece?

YES. Foreign awards can be enforced in Greece irrespectively of the country where they have been issued. This can be done by virtue of the New York Convention for its contracting states, by virtue of bilateral conventions and by virtue of the Greek Code of Civil Procedure for the rest of the world.

Has Greece adopted the UNCITRAL model arbitration law?

YES. This has been incorporated into law 2735/1999 under the title “Law on International Arbitration” which regulates international arbitration conducted in Greece. Under art. 36 of this law, foreign arbitral awards are to be enforced in Greece under the 1958 New York Convention, which has been incorporated into Greek law by legislative decree 4220/1961. Domestic arbitration is regulated by articles 867-903 Code of Civil Procedure. This means that different provisions apply in respect of purely domestic and international arbitration in Greece, while enforcement of foreign awards is primarily made under the New York Convention.

**ENFORCEMENT OF AWARDS ISSUED IN NEW YORK CONVENTION MEMBER STATES**

Is Greece party to the 1958 New York Convention of the enforcement of foreign awards?

YES. As said above, Greece is party to this Convention and there is also considerable Greek courts case law on the Convention. This means that all judgments issued by courts in the rest of the contracting states of the New York Convention are enforceable in Greece under this particular Convention (legislative decree 4220/1961).

What are the reasons of non enforcement under the New York Convention and how are they applied by the Greek courts?

Art. V of the New York Convention (as incorporated into Greek law by legislative decree 4220/1961) applies in this respect. Under this article, a foreign award will not be enforced in Greece if it violates Greek ordre public (point 2b) and if it is not capable of settlement by arbitration under Greek law (point 2a). These two points can be controlled by the Greek Court on its own motion. Also, a foreign award will not be enforced if the arbitration agreement was invalid under its law or the law of the award (point 1a), if the parties were not capable of entering into an arbitration agreement (point 1a), if questions of due process of the arbitration, particularly notice to the defendant were not observed (point 1b), if the foreign award surpasses to scope of the arbitration agreement (point 1c), if the composition of the Tribunal was not in line with the agreement of the parties or the applicable law (point 1d) and if the award is not final and conclusive (point
All these points must be pleaded and proved by the defendant. It must be said that generally Greek Courts are very liberal in applying the above provisions and most foreign arbitral awards are enforced in Greece without problem.

**ENFORCEMENT OF AWARDS FROM NON-NEW YORK CONVENTION CONTRACTING STATES**

**Can foreign awards be enforced in Greece on different legal bases, such as International Conventions?**

YES. Greece is party to a number of bilateral international conventions which include provisions on the enforcement of awards. More particularly, Greece has signed and ratified international conventions in this field (or in a wider fields such as judicial assistance which includes provisions on enforcement) with Cyprus, Germany, Hungary, Lebanon, Romania, Syria, USA and Yugoslavia - now in force for the successor states.

**What is the case with judgments issued in a non-New York Convention contracting state or in a country with which Greece has not entered into an International Convention?**

Such judgments are enforceable in Greece under the relevant provisions of the Greek Code of Civil Procedure, as presented hereunder.

**What is the particular enforcement procedure of foreign awards under the Code of Civil Procedure?**

Under art. 906 of the Code of Civil Procedure, it is the procedure of art. 905 point 1, as is the case with foreign courts’ judgments as well. Therefore, the Monomeles Protodikeio is competent to declare the award enforceable. Any defence will be based on the reasons of non-enforcement hereunder. The Efeteio is competent to hear any ordinary appeal to the judgment of the Monomeles Protodikeio and Areios Pagos is competent to hear any extra-ordinary appeal (only on points of law).

**What are the reasons of non-enforcement of the arbitral awards under the Greek Code of Civil Procedure?**

Under art. 906 of the Code of Civil Procedure, the reasons of non-enforcement are the ones of art. 903. Reasons of non-enforcement of awards include (a) the invalidity of the arbitration agreement under its governing law, (b) the fact that, under Greek law, the subject matter of the dispute could not be resolved by arbitration, (c) the fact that the foreign award is not final and conclusive, (d) the fact that the defendant was deprived of its right of defence in the course of the arbitral proceedings, (e) the existence of a Greek court judgment on the same dispute between the same parties and (f) the finding of the Court that the award violates Greek ordre public.

**What is the approach of the Greek courts regarding enforcement of foreign arbitral awards under the Greek Code of Civil Procedure?**

Generally, Greek courts are very careful with the application of the provisions for non-enforcement of foreign awards. To our knowledge, there are only few judgments that have denied enforcement in Greece, mostly on ordre public grounds.
Are arbitration and other ADR methods developed in Greece?

Arbitration is not particularly developed in Greece. However, there is a trend in favour of arbitration, particularly in respect of more important disputes having also an international dimension. There is also a new law on mediation (3898/2010), which has incorporated the EU mediation directive (2008/52 EC) in Greece and it is hoped that this will lead to an important number of disputes to be resolved under this method.
ENFORCEMENT ACTIONS AGAINST MEMBER STATES (Articles 258-260 TFEU)

How is a proceeding against a Member State initiated?

Articles 258 - 260 TFEU provide for enforcement proceedings against a Member State initiated by the European Commission or, rarely, by another Member State. The proceedings are initiated either by the Commission on its own motion or by a complaint lodged by a physical or legal person. The proceedings begin with the Commission issuing a letter of formal notice, addressed to a specific Member State. In this letter the Commission describes the alleged infringement of EU law and invites the Member State to take the necessary corrective measures and submit its observations. If the answer of the Member State does not satisfy the Commission, then the latter will issue a reasoned Opinion (article 258 §1 TFEU), which includes a detailed assessment of the alleged breach of EU law, sets out a reasonable period for compliance by the Member State and delimits the subject matter of the dispute. If the Member State does not comply within the delimited deadline, then the Commission has the right, but not the obligation, to bring the matter before the Court of Justice of the European Union (article 258 §2 TFEU).

Which European institution is responsible for the initiation of such proceedings?

The enforcement actions against a Member State which fails to comply with EU law are initiated only by the European Commission.

Which Court of the European Union has jurisdiction for enforcement actions against Member States?

The competent Court to rule on enforcement actions against Member States is the Court of Justice of the European Union (CJEU).

How can a physical or legal person submit a complaint for violation of EU law?

Anyone may lodge a complaint with the Commission against a Member State for any measure or practice attributable to the specific Member State. To be admissible, the complaint must not be anonymous and it has to relate to an infringement of EU law. It is submitted by the complainant in writing and it should include as many relevant details as possible. The Commission provides for a complaint form through its website, although it is not compulsory to use this specific form. Following the submission of the complaint, the Commission initiates an inquiry, in order to verify the content of the complaint.

Does the complainant play a role in the proceedings against a Member State?

Although the proceedings against a Member State often commence from a complaint, the complainant does not take part in the proceedings before the Court. However, according to a Commission Communication, complainants have some limited procedural guarantees; they should be kept informed about the process by the Commission and the Commission is obliged to reach a decision on whether to initiate a process within 12 months, thus limiting the period of uncertainty for the complainant.
Is the Commission obliged to bring proceedings against a Member State?

The Commission has complete discretion to initiate proceedings against a Member State or to cease them and is not bound by the fact that an individual has lodged a complaint against a specific Member State. It should be noted, however, that, apart from the ones that are clearly inadmissible, the vast majority of complaints are taken into account by the Commission and proceedings are initiated.

Can a Member State lodge a complaint against another Member State?

Article 259 TFEU provides that a Member State can lodge a complaint against another Member State before the Court of Justice. Such complaints have been extremely rare in practice and have usually been a result of a political dispute between the two Member States.

Can a pecuniary penalty be imposed on a Member State and is there an upper limit to such penalty?

If, after the judgment of the CJEU, a Member State fails to comply with the CJEU's judgment which concludes that the Member State has indeed breached EU law, then the Commission may initiate proceedings against the Member State pursuant to article 260 TFEU. A new judgment of the CJEU following the procedure provided in article 260 TFEU shall impose a pecuniary penalty to the Member State.

There are two types of pecuniary penalties to be imposed on Member States; the first type is a lump sum, which is a single, one-off sanction. The second type consists of a penalty payment, which is calculated at a daily rate applied to each day of delay in compliance of the Member State after the judgment. Although article 260 § 3 TFEU states that a lump sum or a penalty payment can be imposed, the Court of Justice has ruled that the two sanctions can be imposed cumulatively. No upper limit for the fine is provided in the Treaty. It is calculated according to a specific formula and should be in accordance with the principle of proportionality.

PRELIMINARY RULINGS (Article 267 TFEU)

What is the preliminary rulings procedure in a nutshell?

According to article 267 TFEU, when a question concerning the interpretation of the EU Treaties or the validity and interpretation of EU acts is raised before any court or tribunal of a Member State, then the national court has the discretion (or, in some cases, the obligation) to request from the European Court of Justice to give a ruling in order to clarify the specific issue. The preliminary reference is, in essence, a question submitted by the national judge to the CJEU, aimed at ensuring the uniform application of EU law throughout the Union.

Which Courts of the EU have jurisdiction to issue preliminary rulings?

Preliminary references are addressed to the Court of Justice to the European Union. Pursuant to article 256 § 3 TFEU, the General Court has also jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267, in specific areas laid down by its Statute.

Who can request a preliminary ruling?

Any court or tribunal of a Member State, no matter how high or low, can request a preliminary ruling. The TFEU does not define the terms “courts” and “tribunals”, but the European Court has set out, through its case law, a number of conditions that have to be fulfilled so that a national judicial body can be considered a “court or tribunal” within the meaning of article 267 TFEU. These conditions include, amongst others, the following:
whether the body has been established by law; whether its jurisdiction is compulsory; whether it applies rules of law; whether it is independent; whether it is permanent.

Are national courts obliged to refer a question to the Court of Justice for a preliminary ruling?
According to article 267 § 2, national courts and tribunals enjoy, in general, discretion as to whether to request a preliminary ruling by the Court of Justice or not. Nonetheless, when national courts or tribunals of a final instance (i.e., courts or tribunals the decisions of which are not subject to judicial remedy under national law) are faced with a question of application or interpretation of EU law then, according to article 267 § 3 TFEU, they are under an obligation to refer the question to the CJEU.

Which provisions of EU law can be the object of a preliminary ruling?
Preliminary rulings can be made in relation to, firstly, Treaty provisions and, secondly, to acts of EU institutions, bodies, offices or agencies (for instance, regulations, directives, decisions).

Can natural or legal persons request a preliminary ruling?
Natural and legal persons cannot, by themselves, request a preliminary ruling before the CJEU. They can however suggest to the national court, before which the main proceedings are pending, to request a preliminary ruling from the CJEU. It should be noted that the national court is not bound by the parties’ request. Moreover, natural or legal persons who are involved in the proceedings before the national court that refers the preliminary question to the Court of Justice have the right to intervene in the preliminary reference procedure before the CJEU.

Can the Court of Justice decline to give a ruling on a preliminary question?
The Court of Justice assesses the suitability of the question and has the power to refuse to hear it in the following cases: when it considers that the question is of a hypothetical nature or even when it suspects that the referred dispute is fabricated; when it considers that the question is not relevant to the facts of the case; when it believes that the facts of the case are not clear enough for the Court to be able to apply the relevant legal rules. Should the Court consider that a question is not properly articulated, it may choose to reformulate the question itself.

Does the Court of Justice apply EU law to the facts of a particular case, namely the case before the national court which submitted the preliminary question?
Although article 267 TFEU empowers the Court of Justice to interpret the Treaties, it does not empower it to apply the Treaties to the facts of the particular case which is pending before the national court and submitted the preliminary question. The Court of Justice answers the preliminary questions by its judgment, but it falls in the national court to apply it to facts of the particular case before it.

REVIEW OF LEGALITY (Article 263 TFEU)
What does the review of legality involve in a nutshell?
Articles 263 and 265 TFEU provide for the testing of the procedural and substantive legality of EU acts. Specifically, Member States, EU institutions and natural and legal persons can bring actions for annulment of specific EU acts before the Courts of Justice of the European Union if they consider them to be in breach of EU law. An action for annulment can also be addressed against EU institutions for failure to act (institutions’ omission), in order to have the infringement established.
Which acts can be reviewed?
All EU acts that are intended to produce legal effects vis-à-vis third parties can be subject to review of legality by the Courts of Justice. This includes legislative acts such as regulations, directives and decisions, acts of the Council, the European Commission and the European Central Bank, as well as acts of the European Parliament, the European Council and other bodies, offices or agencies of the Union. Recommendations and opinions are not reviewable acts.

On what grounds can the legality of an act be reviewed?
The legality of an EU act can be reviewed on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application and misuse of power.

Who can review the legality of EU acts?
The provisions of article 263 TFEU distinguish between privileged, semi-privileged and non-privileged applicants. More specifically, the European Parliament, the Council, the Commission and the Member States, are considered to be privileged applicants and can bring an action before the CJEU in all cases. The Court of Auditors, the European Central Bank and the Committee of Regions are considered to be semi-privileged applicants and can only bring an action for purposes of protecting their prerogatives. Finally, and most importantly, natural and legal persons are considered to be non-privileged applicants and can only bring actions against EU acts, provided that they are addressed specifically to them, or they are of direct and individual concern to them.

Is there a time limit for the challenge of the legality of an EU act?
Pursuant to article 263 § 6 TFEU, an EU act can be challenged within two months of the publication of the measure in the Official Journal of the European Union, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the plaintiff.

Which Court of the EU has jurisdiction to review the legality of an EU act?
Both the Court of Justice of the European Union and the General Court have jurisdiction to review the legality of EU acts, depending on the nature of the reviewable act.

What is the consequence of the illegality of an act?
When the Court rules that an EU act should be annulled, then the act is declared invalid retroactively (ab initio), and is considered to never have existed in the legal world. The invalidity of the act can be contested erga omnes, that is, it is void against everyone and not only against the parties involved in the proceedings.

ACTIONS FOR DAMAGES (Articles 340 AND 268 TFEU)

Does EU law allow for action for damages?
The TFEU includes specific provisions relating to the non-contractual liability of the Union, (art. 340 TFEU) and specifically provides for actions for damages in article 268 TFEU.

Which Court of the EU has the jurisdiction in disputes relating to compensation for damage?
Actions seeking compensation for damage caused by the institutions of the European Union or their staff are brought before the General Court of the European Union.
Which conditions have to be fulfilled?

There are specific conditions that have to be fulfilled for an action for damages to be considered admissible. Firstly, a serious breach of EU law by the Union institutions which are accused should be proven. Secondly, actual damage should have occurred. Thirdly, the existence of a causal link between that conduct and the harm alleged should be evident.

PROCEDURES BEFORE THE CIVIL SERVICE TRIBUNAL (Article 270 TFEU)

Which cases are brought before the Civil Service Tribunal?

The Civil Service Tribunal has jurisdiction to hear and determine at first instance disputes between the European Union and its servants, pursuant to Article 270 TFEU. These disputes concern not only questions with regard to working relations in the strict sense (pay, career progress, recruitment, disciplinary measures etc), but also with regard to the social security system (sickness, old age, invalidity, accidents at work, family allowances etc). Its jurisdiction does not extend to cases between national administrations and their employees. The judgments of the Civil Service Tribunal may, within two months, be subject to an appeal to the General Court. The grounds of the appeal are limited to questions of law.
BASIC ASPECTS OF CIVIL LAW
Which are the sources of the Greek Contract Law?

Greece has a statutory legal system. Therefore the main sources of Greek Contract Law are: (a) The Greek Civil Code (Art. 127-946), (b) Law Nr. 2251/1994, regarding several aspects of business to consumer contracts and (c) other Laws on specific contract types, e.g. Law 1652/1986 on Time-Sharing, Law 1665/1986 on Financial Leasing, Presidential Decree 34/1995 on Commercial Lease etc. Furthermore Greek Contract Law has been affected by the EU effort for the unification of Contract Law. Although a common Code of European Contract Law is not due for decades to come, many European directives have significantly influenced Greek Contract Law (e.g. Directive 1999/44/EC on Consumer Sales, Directive 93/13/EEC on Unfair Terms in Consumer Contracts etc).

Which are the legal requirements for the formation of contracts?

Mutual agreement with an intention to create legal relations. Consideration is generally not required according to Greek Law.

When is it ascertained that the parties have reached mutual agreement? Are there any rules of conduct during contract negotiations?

An agreement is reached when the parties have agreed on:
(a) the essential terms of a contract type as defined by law (essentialia negotii), e.g. price and object of purchase for a sales contract and
(b) any point which according to the expressed wish of one of the parties was to be part of the contract (accidentalia negotii).
Failure to agree on any of the above equals to lack of agreement, therefore to lack of a binding contract.
During the stage of contract negotiations the parties have to observe certain rules of conduct dictated by good faith and commercial practice (Art. 197 Greek Civil Code). For example, although a party is not obliged to disclose all information to the other part, failure to reveal during negotiations certain information which is objectively necessary for the other party, may be deemed as conduct in bad faith.
Conduct in bad faith at fault of a party may result in an obligation to compensate the other party, even if a contract has not been concluded (Art. 198 Greek Civil Code). Such compensation will cover only reliance interest.

How can a contract be formed?

A contract can be formed by means of offer and acceptance of the offer, e.g. by separate declarations by the parties. In such a case the mirror-image rule applies, e.g.
the acceptance of the offer must be unqualified and unconditional. Several provisions regulate the process of offer and acceptance, e.g. possibility to revoke the offer before it reaches the other party, expiration of the offer within a time limit set by the offeror or according to good faith, offer remains in force even after the death/loss of capacity by the offeror (Art. 185-194 Greek Civil Code). In practice, however, most contracts are concluded by means of mutual and simultaneous approval (e.g. simultaneous signing) of a legal document, therefore offer and acceptance rules are generally not applicable.

Are there any formalities required for contracts?
The general rule is that contracts are not subject to any kind of formalities (Art. 158 Greek Civil Code).
However, the parties may opt for any form of their choice. Failure to comply with the formality of choice shall entail, in case of doubt, the nullity of the contract. However, the performance of the contract with the knowledge of the defect as to form shall remedy such defect (Art. 159 para. 2 Greek Civil Code).
Furthermore, certain types of contracts are subject to a legal constitutive form (ad solemnitatem) by means of either a document drafted before a notary public (contracts regarding real estate, donations or other gratuitous transfer of rights, etc) or of a private document signed by the parties (guarantees etc). Failure to comply with a legal constitutive formality shall entail the nullity of the contract (Art. 159 para. 1 Greek Civil Code).
Moreover, several tax law provisions pose contract formality issues. Several contract categories (sale of real estate, assignment of claims, loans, leases, Transfer of shares of a joint stock company etc) are subject to stamp duty and/or other tax formalities, according to which contract document must be submitted after and/or prior signing to the competent tax authorites.

Can I conclude a contract orally or by exchange of e-mails?
Provided the intended contract is not subject to a legal constitutive from (see above), a contract may be concluded by any means of expression, e.g. speech, e-mails etc. However, it is advisable to conclude contracts by means which would facilitate proof of the existence of the contract, e.g. in writing.

Are there any limitations to the capacity of parties to conclude contracts?
Adults, viz. persons who are over the age of 18, have an unlimited capacity to conclude contracts. Minors and adults who are put under custody by virtue of a court order due to mental illness have no or limited capacity to conclude contracts, depending on several factors (age, scope of the contact, seriousness of mental illness). Legal entities (juristic persons) have the capacity to conclude any contract, provided that the relevant contract was executed by its legal representative and that the latter was acting within the scope of his/hers powers (Art. 70 and Art. 127-129 Greek Civil Code). Therefore contracts which are beyond the scope of the juridical person’s business are not binding on it. Exceptionally, contracts concluded by joint stock companies (e.g. companies incorporated under Law 2190/1920), limited liability companies (e.g. companies
incorporated under Law 3190/1955) and shipping companies (e.g. companies incorporated under Law 959/1979) are binding on the relevant companies even if they lie outside the scope of the company business.

Is it possible to make the effects of a contract dependent on the occurrence of certain events?

Yes, the effects of a contract can be made dependent on the occurrence of future and uncertain events, which are called “conditions”.

Conditions fall into two main categories: suspensive and resolutive.

Suspensive conditions suspend the effects of the contract until the condition is met. For example parties who enter a lease contract agree that the agreement will not come into effect until the lessee obtains an administrative permit relative to the intended use of the leased premises. The obligations arising out of the Lease agreement (e.g. the Lessor has to provide the Lessee with access to the leased premises and the latter has to pay rent to the former) become active only after the Lessee obtains the relevant administrative permit.

Resolutive conditions allow for the effects of the contract to occur immediately. However, upon fulfillment of the resolutive condition the effects of the contract cease automatically (ipso iure). For example a debtor transfer ownership of a movable object to his creditor on the resolutive condition that upon full repayment of the debt the ownership of the movable object will return automatically to the debtor.

Are there any alternatives to a fully binding, definitive contract?

When parties in negotiations have not yet reached an agreement which fully covers the scope of the intended transaction, they have the following options: (a) Conclude a Memorandum of Understanding, (b) Conclude a preliminary contract or (c) conclude an option contract.

(a) A Memorandum of Understanding (MoU) is not a binding contract but a declaration of will by the negotiating parties to reach an agreement. Its practical purpose is to clarify negotiation issues and to act as a roadmap to a final agreement. Its legal value is to define the negotiation rules of conduct, thus clarifying liability issues due to unfair negotiations (culpa in contrahendo-see above). Care needs to be taken when drafting a MoU, because the legal nature of a MoU as a non-binding agreement is judged only by its content. Therefore an agreement which provides for performance obligations by the parties will be construed as a definitive, fully binding agreement regardless of its title.

(b) A preliminary contract is a contract by virtue of which the contracting parties mutually promise to conclude a definitive contract. The parties are bound as of now and if either of them fails to conform, i.e. fails to conclude the definitive contract, he will be liable for breach of contract (e.g. of the promise to contract).

(c) An option contract is a contract by virtue of which one party is given the right to bring about by his unilateral declaration to the other party the conclusion of a new contract or the extension of an existing contract.
What if the parties disagree on matters relating to the contract contents? How are contracts interpreted?

Every declaration of will, including offer and acceptance during the formation of a contract, is construed according to the true intention of the parties, without adherence to the words (Art. 173 Greek Civil Code). Furthermore contracts are interpreted according to the requirements of good faith and common (business) usages (Art. 200 Greek Civil Code). The above provisions of the Greek Civil Code are the two main pillars of a balanced interpretation method where both the true will of the parties and the objective meaning of the contract wording are taken into account. In case of disagreement however courts rule in favor of the objective meaning of the contract wording.

What about implied terms? Can they be accepted as part of a contract?

Implied terms may be accepted as part of a contract either by legal provisions (Terms Implied in Law or default terms) or by contract interpretation (Terms Implied in Fact). Terms Implied in Law or default terms are terms provided for in the Greek Civil Code or in other statutes which take effect in specific contract types unless the contract stipulates otherwise. Terms implied in Law are significant both in number and in importance and they are the reason why Greek Contracts are usually much shorter than common law Contracts.

Terms Implied in Fact refer mostly to supplementary contract provision which fill gaps in the contract, i.e. provide for certain situations which are not covered by an express term of the contract or by a Term Implied in Law. Terms Implied in Fact are based upon the principle of good faith (Art. 288 Greek Civil Code).

What if a party’s declaration/will to enter a contract was mistaken?

An error in a party’s declaration to enter a contract (i.e. offer, acceptance etc) entitles the party in error to annul the contract (Art. 140 Greek Civil Code). An error is deemed substantial when it refers to a point of such importance in regard to the whole contract that if the party in error was aware of it he would not have entered the contract at all (Art. 141 Greek Civil Code).

An error in the party’s will to conclude a contract is legally (Art. 143 Greek Civil Code). However, an error in the party’s will as to qualities of a person or a thing can give reason to annulment of the contract provided that (a) such error is deemed substantial according to the principle of good faith and common (business) usages and (b) the party in error would not have concluded the contract.

A contract by annulled only by means of a judgment. The relevant action can be filed within two years of the contract conclusion. Upon annulment the annulling party must pay reliance damages to the other party (Art. 145- Art. 155-157 Greek Civil Code).

Is a debtor allowed to partial performances?

The debtor is generally not entitled to make partial performances (Art. 316 Greek Civil Code).
What if the other party fails to perform?

If the one party (debtor) fails to perform, performance is still possible (e.g. performance is delayed) and the other party (creditor) is still interested in the performance, the latter has the following options:

(a) Suspend the performance of his obligations arising under the same contract (non adimplenti contractus-Art. 374 Greek Civil Code) or even under other, related contract (jus retentionis-Art. 325 Greek Civil Code) until the debtor performs

(b) Claim for performance

(c) Claim for damages due to the delay, if the debtor is at fault as to the delay (Art. 343-345 Greek Civil Code)

If the one party (debtor) fails to perform, performance is still possible but the other party (creditor) is not interested in the performance, the latter has the following options (Art. 383-385 Greek Civil Code):

(a) Set a reasonable time limit, within which performance must take place and declare to the debtor that after the lapse of this time-limit he rejects performance.

This step is not necessary when:

- the creditor has no longer interest in performance (e.g. the purpose of the contract cannot be served by a delayed performance),
- a time-limit would be pointless since the debtor would not be able/willing to perform
- the parties have stipulated in the contract that no such time-limit is required

(b) After the above time-limit (if necessary) has expired, the creditor may:

- Seek full compensation for non-performance, if the debtor is at fault as to non-performance or
- Rescind the contract and seek reasonable (reduced) compensation if the debtor is at fault as to non-performance.

If the one party (debtor) fails to perform and performance has become impossible (impossibility), the other party (creditor) has the following options:

(a) If the debtor is not at fault as to the impossibility of performance, both parties are released from their obligations to perform. It must be noted that pecuniary obligations, i.e. obligations to pay money, can never be deemed to have become impossible.

(b) If the debtor is at fault as to the impossibility of performance, the creditor may seek damages for non-performance.

What if the other party fails to abide with contractual obligations other than performance? What remedies are there?

A party that fails to abide with any contractual obligation other than delay or non-performance (e.g. defective performance, personal injury or property damage to the other party etc) is obliged to fully compensate the other party, if at fault.
When is a party at fault? Can contractual liability be limited?

The default rule is that a party is at fault when the breach of contract results from intention or negligence. A person is deemed to act negligently if he does not have regard to the care necessary in common (business) affairs (Art. 330 Greek Civil Code). The parties may define the notion of fault within the contract, thus limiting contractual liability, but they may not exempt any party for intentional or gross negligent breaches of contract (Art. 330 Greek Civil Code 332). Any clause which limits liability for intentional or gross negligent breaches of contract, e.g. clauses which limit liability with respect to the amount of damages, is not enforceable.

Can a party be deemed at fault for employees, affiliates etc?

A party is responsible for the fault of any person who he employs in performing his contractual obligation to the same extent as for his own fault (Art. 334 Greek Civil Code).
I. GENERAL (513 et seq. greek civil code—hereinafter CC)

What are the basic rights and obligations created for the seller and buyer with the conclusion of the contract of sale?

The contract of sale is promissory and bilateral, resulting merely in the creation of rights and obligations under the law of obligations. In particular, the seller undertakes the obligations to transfer the property on the goods (without defects and with the agreed quality) and deliver them to the buyer, while the buyer undertakes the obligation to pay the agreed purchase price to the seller. It itself effects no alteration on the parties’ rights in rem, meaning that the object of sale remains in the seller’s property even after the conclusion of the contract. Thus, it can be confiscated by the seller’s creditors and, in case the seller is declared insolvent, it constitutes part of his insolvency property. Furthermore, the sale of goods belonging to a third party is legally binding and creates obligations for the seller regarding possible restitution of damages.

Must the purchase price be money?

Yes and no. The purchase price, as agreed upon in the contract, has to be stipulated in a certain amount of money. In contrast to this the payment itself can be made through other means. The price is not required to be reasonable, yet it must not offend the good morals (178-179CC).

When has the payment to take place?

If there is no contrary agreement, payment becomes due immediately.

How can the seller demand the payment of the price without time-consuming litigation?

The price constitutes a claim for which, meeting the conditions of Art.623 and 624 of the Greek Civil Procedure Code —hereinafter CPC—, i.e. by direct proof through written documents, a summary notice to pay can be issued.

How can the seller secure the payment of the price if the goods must be sent to another place?

The securement can be reached e.g. through the issue of an irrevocable guaranteed bank credit, issued by the bank in favor of the seller/sender.

Are there form requirements for the conclusion of the sale’s contract?

The law does not generally provide a form requirement. Yet, there are exceptions, such as the sale through self-contract (235CC). Furthermore, the parties themselves can agree upon a special form for the sale contract (159sec.2CC). Generally, it should be
highly recommended, especially as for international sales, that the parties conclude the contract in writing, in order to secure the mutual rights but also to allow the proof by documentary evidence for an (enforceable) summary notice to pay, which can be obtained relatively quickly. But also in case of contentious jurisdiction (393sec.1CPC), one has to know that the proof by witnesses is not allowed if the object of the contract goes beyond a certain amount (at present 20.000,-€).

**Do the parties of a contract of sale have any secondary obligations?**

Yes. Such obligations are imposed by the CC (e.g. providing information on the legal relations concerning the goods for sale and delivery of all the relevant documents, Art.519CC), or through agreement, or by good faith and transaction customs. Secondary obligations can be also found in special laws, such as the law on the consumers’ protection as for e.g. the labeling on the package or the providing of instructions of use in the Greek language. The culpable breach of secondary obligations constitutes a defective or inappropriate performance, resulting to the seller’s obligation for restitution of damages.

**Is the acceptance of a check or a bill by the buyer deemed as payment of the price?**

No. The buyer’s acceptance of a check or a bill or their endorsement, through an agreement between the parties, regularly will not be considered as payment of the price; it merely constitutes a promise to pay, meaning that the discharge of the debt occurs only with the payment of the check or bill (421CC).

**What rights do the seller and the buyer have against each other in case of breaching of their primary obligations?**

In case of culpable incapacity of the seller to perform his primary obligations, the buyer can refuse the payment and demand full restitution of damages (382CC) or repudiate the contract (382CC) regardless whether it concerns initial or subsequent incapacity. The buyer has the same rights in case of culpable delay of the performance.

The seller himself, in case of delay of payment, has the same rights as the buyer, i.e. he can refuse the goods, demand full compensation or repudiate the contract.

If one party’s conduct simultaneously meets the conditions of tort, it, cumulatively, has a claim based on tort (914 et seq.CC).

As for the special cases of legally faulty and defective goods, see hereinafter II and III.

**Who bears the risk for destruction or deterioration of the goods?**

According to Art.522CC, the risk for the at random destruction, loss or deterioration of the goods is transferred to the buyer at the time of delivery. Thus, the buyer has to pay the price, even though the goods have been destroyed, immediately after having been delivered.

But, in case the sale is under a condition, there has to be made a differentiation. Thus, if the sold goods were delivered to the buyer pending a suspensive condition, the risk for at random destruction or deterioration of the goods, which occurred prior to the fulfillment of the condition, burdens the seller, while it burdens the buyer in case of a resolutory condition.

Moreover, CC provides an exception, in case of sale to destination according to buyer’s instructions. In this case, the risk is transferred to the buyer from the moment the goods are delivered for shipment (524CC).
Particularly as for the sales with the agreements cif (cost, insurance and freight) and fob (free on board) through shipment, the risk is transferred to the buyer, not from the time of delivery for shipment, but only with the ship's loading.

Who has the obligation to pay the expenses for the delivery and receipt of the goods?
The seller is burdened with the expenses for the delivery of the sold goods, while the buyer undertakes the expenses for taking delivery and the shipment to a different place than the place of performance (526CC).

Can the seller secure the payment of the price by a clause of reservation of title?
Generally yes. In this case, the transfer of ownership occurs when the (suspensive) condition of the payment of the price is fulfilled. In case of the buyer's default, the seller is granted the right to claim the payment or to terminate the contract, exercising his property rights (532CC). Under the CPC he is furthermore entitled to claim his ownership by judicial interim measures, in a relatively short time.

But what, if the buyer transfers the goods to third parties?
In this case applies that the prohibition of the disposition of the goods in the contract of sale has only contractual effect and does not bind the buyer, not to further transfer them nor has it effect on the buyer's creditors who confiscate or dispose them. If the seller wishes to prohibit such an action, he can determine that the transfer of the goods will be under the resolutory condition of non further transfer by the buyer. Thus, if the buyer attempts to transfer the goods, the ownership returns automatically to the seller (202, 206CC).

What applies in case of insolvency of the buyer before he has accomplished the payment?
As already said, the transfer of ownership on the goods is under the suspensive clause of the payment of the price. Therefore, during this time of uncertainty, the seller is not only the owner, but also the proprietary possessor, while the buyer has the mere possession of the goods. Hence, according to a strong (probably prevailing) legal opinion, the seller can demand the goods in case of the buyer's insolvency, if he has repudiated the contract on the grounds of the buyer's default, in fact regardless of the time of the repudiation, meaning if it was declared before or after the insolvency.

Is the Greek law harmonized with the Community and International law?
1. Law No 3043/2003 has implemented the Directive 1999/44/EC, which resulted in important changes in the national law of sale of goods, particularly regarding the provisions of Articles 534-537 and 540-561CC about the obligations and the seller's warranty of soundness.
2. The United Nations' Convention on Contracts for the International Sale of Goods (hereinafter, CISG) has been implemented in the national Greek legislation through the Law No 2532/1997, which came in force on the 1.2.1998. The provisions of CISG apply on a contract of a Greek with a non-Greek party, if the parties' of the latter resides in a State that also has ratified the Convention.
The CISG contains non-mandatory provisions (Art.6CISG) and is autonomously interpreted. According to Art.11, the contract of sale does not have any form requirements.
Comparing CC with the CISG, one can state mainly the following differences: According to Art.55CISG, if there is no explicit or tacit determination of the price, it is presumed, in the absence of any indication to the contrary, that the parties have agreed on the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned. Also, Art.30 recognizes three – instead of two under the CC – separate primary obligations of the seller, the obligation of delivery, the obligation of handing over any documents relating to the sold goods and the obligation of transfer of ownership. Furthermore, Art.42 constitutes a special provision regarding the seller’s liability for the existence of Intellectual Property and Industrial rights under the law of the State where the goods will be resold or otherwise used, or, in any other case, under the law of the State where the purchaser has his place of business. Art.38 explicitly defines the buyer’s obligation to examine the goods as soon as possible after their delivery. Furthermore, according to Art.39(1) he will lose his rights from the defectiveness of the goods, if he does not give notice to the seller within a reasonable time, after having noticed or after the time he could have noticed the defect, specifying the defect. The same applies in case of legal faults (Art.43sec.1).

II. LEGAL FAULTS (art. 514 et seq. cc)

Which are legal faults and what are the buyer’s claims which result from such faults?

1. According to Art.514CC, the seller has the obligation to transfer the goods free from any rights that third parties may claim. Any contractual rights or rights in rem on the goods, which can be invoked against the buyer and hinder the free transfer of ownership as well as the exercise of the powers deriving from it, are considered as legal faults. Hence, the seller’s lack of ownership and/or owner-possession, claims under the law of obligations which can be objected against the buyer, the seizure and the civil arrest, the judicial sequestration and rights of public law constitute legal faults.

2. The seller is obliged to free the sold goods from the existent legal faults. The crucial time for the discharge of the aforementioned obligation is the time of transfer of ownership. Hence, for any legal faults that arise afterwards, the seller has no liability, unless they originate from an event that occurred at the time of performance. Nevertheless, Art.515CC contains an exception which provides that if the buyer had knowledge of the existent legal faults when concluding the contract of sale, the seller is dismissed from his liability, unless it pertains to confiscation or pledge, for which the seller is liable regardless the buyer’s knowledge.


What are the obligations of the seller in case the sold goods have defects or lack agreed characteristics?

According to Art.534CC the seller is obliged to deliver the goods with the agreed characteristics and without defects. Hence, this obligation constitutes a basic and primary obligation for the seller. Hence, if the defect or the lack of agreed characteristics has been discovered until the time of delivery and if the seller refuses or is incapable of delivering the goods without faults, the buyer’s protection is covered utterly by the general provisions of non-performance or defective performance. On the other hand, if the buyer
detects the defectiveness of the goods after their delivery, he is still entitled to demand the delivery of non-defective goods, but he does not have the rights provided in the general provisions for non-performance, since in this case the special provisions of Art. 540 et seq., CC are exclusively applicable, through which a most efficient protection is provided, including the rights to repair and substitute the goods and to diminish the price.

What is a defect of goods?
A defect is the deviation of the goods towards the worse in comparison with its normal state, that hinders them to comply with the content of the contract of sale. Furthermore, the delivery of goods of a different species from the agreed ones, also creates a case of defective goods.

What are the agreed characteristics (the agreed quality)?
Characteristics are the natural features or advantages of the goods for sale as well as any relation which, according to transaction customs, affects their value or their use, due to its nature and duration. These characteristics are considered as agreed upon when the seller has explicitly or implicitly assured the buyer for their existence.

Do the provisions of Art.534 et seq. constitute mandatory or non-mandatory law?
These provisions are non-mandatory, thus the seller's liability can be regulated in a different way by the parties. Yet, there is always the limit of Art. 332 CC which provides that if the contract contains a clause foreseeing the seller's a priori dismissal from his obligations when acting at fault, the latter is void.

What are the consequences of the buyer's unconditional receipt of the goods?
If the buyer received the goods without reservations, knowing the fault or the lack of agreed characteristics, he is regarded as if he had accepted the goods as they are (545 CC). However, this acceptance does not dismiss the seller from possible tortious liability or culpa in contrahendo.

What is the statutory period of limitation for the rights of Art.534 et seq.?
The buyer's claims become statute-barred after two years from their delivery (554 CC). The period of limitation begins with the delivery of the goods, even if the buyer discovered the fault or lack of agreed characteristics later (555 CC). However, if the parties have agreed on a fixed period for the seller's liability, the limitation for respective actions regarding a fault that has appeared within this period begins from the time of their appearance (556 CC). In addition, the buyer can invoke the abovementioned rights through an objection against the seller's claims, even if they have become statute-barred, provided that he had already notified the seller about the fault within the two-year time-limit (558 CC). Furthermore, the seller cannot invoke the limitation, if he concealed or hid defects or lack of agreed characteristics with malice (557 CC).

What are the buyer's claims in case of providing of a guarantee?
According to Art.559 CC, if the seller or a third party has provided a guarantee for the sold goods, the buyer has against the guarantor the rights that derive from the statement
of the guarantee, in accordance with the terms included in the latter or in a relevant advertisement, without affecting his further legal rights.

IV. OTHER TYPES OF SALE

Can goods be purchased after the buyer’s approval?

Yes. The sale on approval constitutes a legal type of sale under Greek law, which, in case of doubt, is considered being under the suspensive condition of the buyer’s or even a third party’s consent (563CC). It is also possible to conclude the contract of sale under the resolutory condition of the buyer’s disclaim.

Is it possible to agree upon a repurchase of the seller?

It is a clause included in a contract of sale, according to which the seller is granted the right to buy back the sold goods within a certain time-limit and at a certain price, through his mere declaration of will to the buyer (Art.565-572CC).

V. THE ELECTRONIC COMMERCE

Is there a Greek legal framework for electronic contracts of sales of goods?

As for the electronic commerce, the EU issued the Directive 2000/31, which has been implemented into national legislation through the presidential declaration No 131/2003. Indicatively, there is a special regime regarding the required formalities and the liability of intermediary service providers.
What is the scope of unjust enrichment in the Greek Law?

Unjust enrichment denotes any benefits received or acquired by someone from another person or at his cost on nil or void legal grounds. The law for unjust enrichment is codified in a special chapter of the Greek Civil Code (GRCC) extended from article 904 to article 913 GRCC. The fundamental provisions are contained in Article 904 GRCC which provides the claim to recover from the defendant the benefit or its value. The basic idea behind these rules lies in that someone takes back what he gave although he was not due to or what he lost due to interference. The law for unjust enrichment basically provides a restitutionary claim. Restitution includes here also the reimbursement of the loss suffered provided that the loss of the claimant reflects an equivalent benefit on the side of the defendant. If someone destroys a thing there is only loss for the owner but no benefit for the destroyer. The defendant owes compensation for wrongdoing in this case; there is no unjust enrichment claim.

In terms of Greek law as well as in terms of continental law unjust does not necessarily indicates unfair enrichment. It rather means enrichment neither based on a contract nor on the law. The Greek term “αδικαιολόγητος πλουτισμός” (=adikaiologitos ploutismos) should more precisely be translated as unjustified enrichment in the sense that the law does not support or even it deprecates the benefit acquired by someone. Neither the acquisition nor the keeping of the benefit is legitimated. The defendant shall give it back or pay for its value. In some exceptional cases the law allows someone to keep an unjustified benefit acquired at cost of another person and in return to compensate the other. The provisions in articles 1057 to 1063 GRCC is a standard example for this. If someone e.g. as lessee decides on his own to renovate and to bring the owner’s building up to modern technology, the brand new fixtures become part of the ownership of the building. If someone builds a house on someone else’s property the house is automatically and compulsorily transferred to the owner of the property in compliance with Roman law principle “superficies solo cedit”. The lessee in the first example and the constructor in the second example are entitled to claim compensation from the owner for the benefits he acquired.

What are the requirements for a claim based on unjust enrichment?

Article 904 GRCC describes the requirements for the claim as follows: “Who became richer from the assets or at cost of someone else without any legal ground shall balance the enrichment. This obligation is particularly given in case of a performance without obligation or in case of a performance in return for something to happen which did not happen or in case of an illegal or immoral performance. The acknowledgment in a contract that a debt does exist or does not exist is also considered as performance”.

a) The enrichment of the defendant at cost of claimant is a fundamental requirement for the claim. Enrichment is either an addition to his wealth or saving of (inevitable) expenses.

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1. See Areopag 2185/2009 Nomos database
The passenger who travels by plane without a ticket is enriched at cost of the airline even if there were many empty seats in the aircraft. The travel and whatever this means to someone is the acquired benefit. The Greek Supreme Court has recently decided the following case. A state entity as employer invited tenders for the construction of a building with over 150 apartments. When the construction was completed by the constructor, courts judged that the tender was void due to non compliance with transparency rules required by tender law and consequently the construction contract signed between the parties was nil and void. The constructor cannot claim the agreed price. However, the employer is enriched as to the expenses it saved for the erection of the building. The employer has a claim on the basis of article 904 GRCC^2.

b) There must be a causation link between the enrichment of the defendant and the loss of the claimant. Despite the opposition of numerous academic writers, the courts firmly require a direct causation link between enrichment and loss. This is practically given when the defendant receives or acquires the enrichment directly from the assets of the claimant without the involvement of any third party. In some cases a third party is involved in the enrichment of the defendant as the following example shows. In the course of an M&A by share deal the purchaser buys the company’s shares from the 100% shareholder and deducts from the purchase price the total amount of a loan which the company owes to the financing bank. The purchaser pays the amount deducted from the purchase price in the company and the company repays the full debt to the bank. The loan debt includes illicit interest charges. Considering the chain of the involved parties, i.e. shareholder/ purchaser/company/bank the shareholder claims that the loan is finally paid from his monies or at his cost and asks the bank to pay him the illicit interest amount which it collected from the company. Since the loan is paid by the company as borrower the causation link between the moving of the monies from the shareholder to the bank is an indirect one. The claim of the shareholder against the bank will be rejected.

c) The enrichment must happen without legal grounds which either means that there is no contractual basis for the receipt of the enrichment or that there is an illicit enrichment. Speaking in terms of continental European law lack of legal grounds means that there is no legal causa or there is no causa at all for the receipt of the enrichment. Again: it is not a matter of fairness; it is a matter of legality or illegality. For instance, the employer receives services from an employee who is illegaly employed because he works without a working permission (“black work“)^3. The employment contract is illegal and void. Therefore, it does neither generate an employer’s claim on the services of the employee nor does it generate a claim on the monies which the employee “agreed“ for his services. Nevertheless the employer is enriched by the value of the illicit services he received. The employee may claim this value on the basis of article 904 GRCC. In the same example it may happen that the employer pays the employee an amount in advance and the latter does not show up for work. There is no contractual claim on the employee’s services; the employee is however obliged to pay back the money received as unjust enrichment.

Can someone be held liable for tort and unjust enrichment at the same time?
The liability for unjust enrichment does not require unlawful act on the side of the defendant, his enrichment at cost of the claimant is practically sufficient for the claim. In this generality, the requirements under article 904 GRCC cover any enrichment even if it is derived from an

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2. Areopag 361/2010 Nomos database
3. Most recently Areopag 1719/2010 Nomos database
unlawful act and constitutes tort liability (article 914 GRCC). If someone presents false facts and makes misleading promises to bring the other party to pay him a certain amount of money, there is a loss on the side of the payer but also a benefit on the side of the defrauder. The facts lead to tort liability. Unjust enrichment is also possible since the loss of the victim is reflected in a benefit for the defrauder. In another example, the stock exchange broker sells shares without any authorization from his customer and shareholder, collects the monies from the sale and spends them to cover customer claims from other unauthorized sales of shares. The broker commits breach of contract and he is also liable for wrongdoing. What he earned by unauthorizingly selling the shares is also an enrichment he owes to pay back to his customer and shareholder of the sold shares. In both examples the question is if the claimant has the free choice to raise either a claim based on unjust enrichment or a claim based on tort (article 914 GRCC) or on both liability heads. Despite some objections brought by academic writers, a claim under article 904 GRCC is not admitted in both examples above. According to the standard maxims followed by the Greek courts, there is no space for an unjust enrichment claim as long as the defendant is liable for tort or for breach of contract. In other words, unjust enrichment is held to be a subsidiary claim and it applies only if there is no claim based on tort or contract. Decisive is only if the requirements for tort or for breach of contract are fulfilled in the specific case. It is irrelevant if the claim for tort or for breach is lapsed due to statutes of time limitation; the lapse of the tort or of the contractual claim does not justify recourse on the liability for unjust enrichment unless otherwise provided by law. In fact, Art. 938 GRCC provides for an exception from the principle of subsidiarity. If the defendant acquired a specific benefit from his unlawful act he is obliged to give the benefit back as unjustified enrichment even if his liability for tort came under the statute of limitation. For example, in collusion with an employee of a private business institution the defendant managed to acquire ownership over a piece of land belonging to the institution although he was not entitled to. If the tort claim is lapsed, the victim (in this case the damaged institution) may raise a claim for unjust enrichment asking the retransfer of the illegally acquired property on the basis of articles 904 and 938 GRCC.

What may be the objections of the defendant?
The defendant may object that he is not any more enriched because he lost or gave away the benefit acquired from the claimant. In most cases it is unlikely that this objection will be upheld. If the defendant used the benefit to repay a debt he is still enriched by the reduction of his debt. If the benefit is a consumable product and it is consumed the defendant has still the benefit of its consumption. If the defendant gave the benefit as a gift it is possible that the gift receiver may also be held liable for unjust enrichment (Art. 913 GRCC).

Is the claim for unjust enrichment subject to the statute of limitation?
As a specific time limit is not provided in the law for unjust enrichment the general statute of limitation in article 249 GRCC applies. The claim lapses in twenty years and the time limitation period starts when the claim arises.

What are the most common cases of unjust enrichment?
Void contracts, avoidance of a contract for mistake or deception are the most common cases which lead to a claim for unjust enrichment. Illegal contracts, black work, void tender

5. Areopag 813/2002 Nomos database
procedures leading to void contracts in the public sector, expenses and investments in someone else’s property without any contractual or other legal basis are some of the examples seen in the flow of the above presentation. Additionally, the following types of cases may be referred as examples where unjust enrichment is applicable.

Engagement of a couple if not followed by marriage. Monies, assets and other gifts made to the man or to the woman during engagement in expectation of the marriage may be subject to return on the basis of Art. 904 GRCC if the marriage is finally canceled.

Interest collected against compulsory law provisions must be returned to the borrower. In the last decade this issue has repeatedly been subject of court disputes between borrowers on the one side and banks as lenders on the other with regard to the charge of interest on interest and the fact that the law requirements for this charge were not followed by the banks.

By performance of construction contracts mainly in the public sector it is often disputed if the contractor is entitled to claim remuneration for additional works for which neither the contract contains any provisions nor did the parties conclude any agreement as to the works to be done or / and to the price to be paid. Greek courts have often awarded the contractor the value of the additional works done on the basis of Art. 904 GRCC provided that there has been no agreement between the parties as to the payment of the additional works.

6. Areopag 844/2011 Nomos database
A relative/friend passed away. How do I know if Greece is involved?

According to the Greek Civil Code the nationality of the deceased determines the law which governs the estate.

If the deceased had multiple nationalities, then Greek nationality takes precedence. If the deceased did not have Greek nationality, then the laws of the nationality which the deceased had stronger relations with, take precedence. In case of no nationality, then laws of the habitual residence of the deceased and finally the law of his residence are applicable.

What does the estate of a deceased person consist of?

The estate of a deceased person governed by Greek law consists of his worldwide assets. Greek law makes no distinction between assets located in Greece or elsewhere. It does not only include assets but also liabilities (i.e. loans, taxes due, etc).

This however does not entail taxation of the entire estate in Greece nor does it impose the obligation to the deceased to draft a Will only according to Greek Law.

There is no Last will and Testament. Who becomes a heir?

In this case, the deceased has died intestate. By Law, certain relatives of the deceased become heirs, by order of proximity. They become owners jointly to all assets of the deceased (community of heirs). They are grouped in “classes”, so that the previous takes precedence over the following. If no relatives exist in one class, then the estate passes on to the second class, etc.:

1st class: Children of the deceased and their descendants.
2nd class: Parents of the deceased, his/her brothers or sisters and the children or grandchildren of any pre-deceased brother/sister.
3rd class: Grandparents of the deceased or their children or grandchildren.
4th class: Grand-grandparents of the deceased.
5th class: The spouse’s inheritance right runs concurrently with the first four classes. If a spouse inherits along with first class heirs, then she receives 25% of the estate. Else, a spouse inherits 50% of the estate in all other cases, or 100% when no other relative exists.
6th class: The Greek State.

How do I know who the closest relatives are?

In order to determine the closest living relatives of the deceased and to distinguish the heirs a special certificate is needed, which is called “next of kin” (“pistopoiitiko plisiesteron syggenon”). It is issued by the Greek municipality where the deceased was registered.
In case the deceased was not registered in Greece, the certificate may be issued by foreign authorities. In that case it must be duly legalized and translated in Greek.

I do not like to own the estate jointly with others.
Community of heirs may be split in a way that each heir receives specific assets, of equal value. It can be done either by contract between the heirs, or judicially.

What if there is a Will?
A Last Will and Testament takes precedence over intestacy. Once a Will is published by a Greek or foreign court, its contents designate the heirs.

I am a relative but my name is not mentioned in the Will.
Only the spouse, the descendants or the parents of the deceased, who would have become heirs, had the deceased died intestate, but have been omitted from the Will, are entitled to a minimum share (“nomimi moira”). This share is one half (1/2) of the share they would have inherited, if there was no Will.
Note that according to Law 1738/1987, minimum share provisions do not apply to out-of-Greece assets of Greek non-residents, who live abroad for more than 25 years (this law has been criticised).
In any case, one should always look if the heir who has been omitted has previously received enough assets from the deceased which cover his minimum share. In that case he/she is not entitled to a minimum share.
There is also the case that the testator may have disinherited his heir for a serious reason that was mentioned in the Will. Such is the case when the heir intends to or has tried to kill the testator, has caused injuries to him or his wife, intentionally neglects to take care of the testator or lives immorally, in spite of testator’s wish.

How can I claim my minimum share?
One may address the Greek Court in order to be recognized as a heir of the deceased up to the extent of his minimum share. Sometimes, for ethical reasons, the benefited heirs might want to settle without going to the court. The extreme scenario would be to contest the form of the Will, in order to declare it void entirely.

There is practically no estate left, because my parents donated everything to another relative.
In case the deceased had donated some or all of his assets while he was alive so that the estate does not suffice to cover the heir’s minimum share, then an action to the Court may be filed within 2 years from the testator’s death, in order to revoke the donation.

I don’t want the estate.
A heir may renounce his whole share, in principle. Renunciation (“apopoiisi”) is performed before the Registrar of the competent Court. The time frame is 4 months for residents or 1 year for non-residents or if the deceased was a non-resident. It starts either form the date of death (intestate) or from the publication of the Will. The declaration is done in Greece, either in person or via representative (special power of attorney needed). Beware that once the heir renounces the inheritance, his share advances to the next heir in line.

I want to accept my share of the estate. How do I take hold of the assets?
Acceptance of somebody’s inheritance is deemed, once the time-frame to renounce the estate has passed. However, no asset can fully come to the heir’s possession unless the estate tax declaration has been filed to the Revenue.
For immovable property it is imperative to “accept the inheritance” at a notary or apply to the Court for an inheritance certificate (“klironomitirio”). Both have to be registered to the competent Land Registry Office.

**What is my tax obligation?**

Greece taxes estates. Every heir must file an estate tax declaration, on his own or jointly with the others, within 6 months from the date of death (or 1 year if the deceased or the heir is a non resident). In most cases, tax authorities accept declarations filed 6 months after the publication of the Will, although the Law is clear that obligations start from the date of death.

**What is taxed?**

- Immovable property that exists in Greece.
- Worldwide movable property of any person who was resident in Greece.
- Worldwide movable property of a Greek national, except for non-residents, living abroad for at least 10 years prior to their death, in which case only Greek assets are taxed.
- Special type of assets that are always taxed in Greece include ships registered in Greece (ships > 1.500gt are exempt), stocks in the Greek stock exchange, shares in Greek companies, bonds, Greek patents and trademarks, accounts in Greek banks (not joint accounts), etc.

**How is the value of the estate determined?**

The value of the estate upon which the tax will be levied is calculated according to the tax value of the assets at the date of death.

**What is the estate tax rate?**

Tax rates are calculated according to the applicable tax rates at the date of death and vary according to the relation between the deceased and the heir. The law mentions three categories. The respective rates (after 23-4-2010)* are:

**Category A:** Spouse (or the other partner in a cohabitation agreement), children, grandchildren and parents of the deceased

<table>
<thead>
<tr>
<th>VALUE CLASS of a heir’s share</th>
<th>TAX RATE %</th>
<th>CLASS TAX</th>
<th>Total value of a heir’s share</th>
<th>TOTAL TAX</th>
</tr>
</thead>
<tbody>
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<td>150,000</td>
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<td>0</td>
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<td>+300,000</td>
<td>5</td>
<td>15.000</td>
<td>600,000</td>
<td>16,500</td>
</tr>
<tr>
<td>EXCESS</td>
<td>10</td>
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</tbody>
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Spouse and children under 18-years of age have a 400,000 € tax-free allowance each (couple has to be married 5 years prior to death). Same applies to the other part of the couple who has signed a “cohabitation agreement” (the agreement has to be signed at least 2 years prior to death).

**Category B:** Third degree blood-line descendants, grandparents (and above), brothers/sisters, nephews, step-father/step-mother, father/mother-in-law, brothers/sisters-in-law, children from previous marriage of the spouse, descendants of a recognized child.
VALUE CLASS of a heir’s share | TAX RATE | CLASS TAX | Total value of a heir’s share | TOTAL TAX
--- | --- | --- | --- | ---
30.000 | 0 | 0 | 30.000 | 0
+70.000 | 5 | 3.500 | 100.000 | 3.500
+200.000 | 10 | 20.000 | 300.000 | 23.500
EXCESS | 20 |  |  |  

Category C: Any other relative or non relatives.

VALUE CLASS of a heir’s share | TAX RATE | CLASS TAX | Total value of a heir’s share | TOTAL TAX
--- | --- | --- | --- | ---
6.000 | 0 | 0 | 6.000 | 0
+66.000 | 20 | 13.200 | 72.000 | 13.200
+195.000 | 30 | 58.500 | 257.000 | 71.700
EXCESS | 40 |  |  |  

* Tax rates vary, according the applicable law to time of death. Due to many changes, it is impossible to depict all tax rates of the previous years in the printed version of this article.

Special provisions:

- Greece has signed Conventions regarding Estates with Germany, Italy, Spain and USA. Their provisions take precedence over Greek Law.
- Partial exemption (200.000-250.000€) if a Greek/EU national, residing permanently in Greece inherits a house or plot which serves as a primary residence, provided he does not have one already. If the heir has children under 18 years old, the allowance is increased by 25.000/child.
- For handicapped heirs (disability >67%) all tax rates are reduced by 10%.
- Exemption if the deceased was military personnel who died on duty.
- Exemption if parents inherit assets they had previously donated to their deceased child.
- Favorable tax rate (currently 0,5%) if the heir is a Public Institution, certain Church institutions, and non-profitable organizations.

What is the process to accept somebody’s estate in Greece?

1. Registration of death: If the deceased has died in Greece the death is declared to the local municipality where the deceased was resident and where his family record is kept. If a Greek died abroad the event has to be declared to the nearest Greek Consulate. Alternatively a duly legalised copy of the foreign death certificate must be registered to the Special Registry in Athens.
2. Next of Kin: If the deceased died intestate then the heirs must obtain a “next of kin” certificate from the Greek municipality where the deceased was registered or from foreign authorities in any other case.
3. Publication of Will: Any Will, it has to be published the Greek Court in the place where the deceased was resident. If the deceased was living abroad, this is done by the First Instance Court of Athens or by the Greek Consulate. Alternatively, if the Will has been published by a foreign Court, it has to be registered to the First Instance Court of Athens.
4. Certificate that “no Will has been published” or that “no other Will has been published”: Authorities ask for a certificate that no Will has been published, in case the deceased has died intestate. When a Will has been published a certificate stating that no other Will has been published is necessary. It can be obtained from the Registrar of the First Instance Court of the district where the deceased was resident.

5. Estate Tax Declaration: All the above documents are submitted with the estate tax declaration. This declaration is usually prepared by a notary, an accountant or a lawyer. All assets of the deceased that are taxed in Greece have to be declared. Once the tax declaration has been filed and cleared, then the heir may transfer the assets under his name (real estate, bank accounts etc).

I want to plan my estate. Which law should I follow?
According to Greek Civil Code and Hague Convention on dispositions (Law 1325/1983) the Will is valid if it is drafted according to the laws of the place the Will was drafted, of the testator’s nationality or of his domicile/residence. However some mandatory rules have to be taken into account. A Joint Will should –in principle– be avoided. Also an oral Will is not valid. A testator should always check with his attorney in Greece if his Last Will and Testament complies with Public Order requirements.

What are my options if I draft a Will according to Greek law?
The basic types are:
A. Holographic Will: It is written by the hand of the testator, without the presence of witnesses, dated and signed by the testator himself. Post scripts or side-notes have to be signed by the testator. A holographic will may be handed to anybody or to a Public Notary for safe-keeping.
B. Secret Will: The testator’s Will is handed over to a Public Notary in the presence of three witnesses (not close relatives –as far as uncles/aunts and nephews). The envelope is sealed and dated. This date serves as the date of the Will.
C. Public Will: Drafted and signed at a Public Notary with the presence of three witnesses (not close relatives-up to uncle/aunt and nephews) or two notaries and one witness.

What are the contents of a Will?
Testators may write anything they want in a Will provided that their last will is not “uncertain”, it is not dependent on somebody else’s wishes, and it is not contrary to the Law and moral standards (i.e. clause that the heir “should not get married”).
A Will is used in order to avoid the estate being jointly owned by all heirs. Therefore a testator may indicate which assets will be conferred to each heir. A testator may also appoint a non relative or a distant one as an heir. Also assets may be conferred to any legal person such as a charity, the Church, etc.
Assets may also be attributed to a specific cause, thus forming a kind of trust (common-law trusts cannot be formed in Greece). Assets have to be administered by the appointed administrator so that the requirements of the testator are met.
A testator should never forget that his spouse, children (and parents -if no children exist), are entitled to their minimum share (1/2 of their intestate share). If he has given them assets in the past that cover their minimum share, this should be mentioned in the Will, so that it doesn’t become challenged.
Of course, there is the option to disinherit an heir for the reasons explained in the beginning of this article.
Can I draft more than one Will?
   Of course! If nothing is mentioned in the new Will, it’s regarded that one supplements the other. You may also revoke a Will at any time by expressly stating this in a subsequent Will. Also you may draft one Will according to Greek law and another according to foreign law.

Is there a way so that I do not get burdened with Wills and my children do not get burdened with inheritance taxes?
   A parent may transfer his real estate prior to his death to his children by doing a “parental gift”. This entails the granting of either full ownership or –wisely- only bare ownership of his assets to his children while keeping the right of administration. The benefit of a parental gift is that assets are distributed easily without the need of Wills, taxes can be deferred in the future and with careful planning, the overall costs may be less than those of an inheritance. However parents must be careful so as not to burden their children with excess assets thus causing problems in the future. For multi-state estates, if only a small part of the estate is located in Greece perhaps a pro-active distribution of the estate in the form of a parental gift reduces the costs and burden of the of the heirs.
When is a marriage which took place abroad considered legal in Greece?

When the following positive conditions apply: different sex, agreement of the (future) husband and wife, legal marriage age, legal capacity, and the following adverse conditions: the simultaneous existence of marriage, related by blood, relationship by affinity, adoption. A wedding which took place abroad between people, one of whom is of Greek nationality is considered valid if the marriage was solemnized according to the law of the country the wedding took place in, unless another valid marriage had proceeded.

How can my life partner be legally secured without the solemnization of a marriage?

After a recent reform of the Family Law, two heterosexual adults may organize their cohabitation (cohabitation agreement/registered partnership) by drawing up in person a notarized document before a notary public. The legal effect of the agreement commences as of the deposit of the official copy at the superintended registrar of their place of residence. The law regarding the cohabitation agreement/registered partnership is applicable to every cohabitation agreement/registered partnership, under the condition it has been drawn up in Greece or before a Greek Consular Authority.

How is the surname of the children determined?

Parents are required to have identified the names of their future children in a joint final statement before the wedding. If they omit this practice, the children will have the surname of their father. If relevant care has been omitted in the cohabitation agreement/registered partnership, the child will have a compound surname. A child born out of wedlock, takes the surname of his mother - the surname of the father may be given to the child, only with the consent of the mother or the child himself.

In case of family dispute, when are the Greek Courts the competent ones, when at least one of the two spouses is a foreigner? Which law is applicable?

For EU citizens and under the condition that the child has his habitual residence in Greece when the petition is seized, competent are the Greek courts. Furthermore, in every case where a counter party is of Greek nationality, the Greek courts have international jurisdiction. The personal relations between spouses are governed by the law: 1. of the last common nationality during the marriage, provided one spouse holds it 2. of the last common habitual residence. 3. of the law with which the spouses are most closely associated.
By which Law are the relations of parents and child regulated?
The Relationships between the parents and the child are regulated in order by the Law:
1. of their last common nationality. 2. of their last common habitual residence. 3. of the nationality of the child.

What’s the difference between disruption of marital cohabitation and divorce?
These are two different situations. The disruption refers to the actual event of the split, meaning the point in time when the physical and psychic bond between the couple no longer exists, without however having as a result the solution of the marriage. The divorce is the legal way to solve the marriage (irrevocable judicial order). The disruption of the marital cohabitation, which is however declared judicially in the framework of some other court hearing (e.g. custody of under aged children), may be used for the separate filing of the tax declaration.

Can a creditor take actions against my husband for my own debt?
In the Greek Law, the principle of separate assets applies. Property and personal bank accounts are not affected (Caution to joint bank accounts!). The mobile assets, however, located in the distribution or possession of one or both spouses shall be presumed, in favor of creditors of each of them, to belong to the spouse who is the debtor. (This presumption does not apply in the event of disruption of marital life.). However, regarding the relations between the spouses, the mobile assets found in distribution or possession of both, are presumed to belong to both in equal parts.

What are the financial claims of a spouse against the other in case of disruption of marital cohabitation and in case of divorce, when the Greek Law is applicable? What happens if there is a cohabitation agreement/registered partnership?
You may ask for:
   a. spouse maintenance (under certain conditions)
   b. exclusive use of family housing and household equipment (under certain conditions).
   c. a proportion from the property acquired during the marriage (under certain conditions: eg, excluding everything acquired by gift, inheritance or bequest.).
   d. maintenance for the children (if any)
Caution: if one spouse has assigned the administration of his personal property to the other spouse, there is no requirement for accountability and performance of the incomes by the administration, unless otherwise agreed.
In case a cohabitation agreement/registered partnership has been drawn up, a relevant term should be included. If nevertheless there is no relevant agreement, each party has claims against the other for what was acquired with his own contribution as well.

Which are the first actions I have to take in case violence is used against me or my children?
Violence is the most important reason for the discontinuation of marital cohabitation. In case of physical violence, it is legitimate and permissible to immediately withdraw from the family home, along with any minor children, and essential household items or even
the adoption of interim measures, so as either to prohibit the person who used violence to remain in the family home, or to designate as a new family home another dwelling. The person who suffered violence should call the police immediately or visit his nearest police station and file a criminal lawsuit. Provided that the lawsuit was filed no later than the end of the day following the commission of the act, the procedure of flagrante delicto is applied and the person who committed the physical assault should be arrested immediately and be referred directly to court. Even if a criminal lawsuit is not filed, the police are obliged to register the event in the records of events. The proof of the actual incident of violence, can be made by witnesses, with medical certificates and photos. Caution: the exercise of systematic physical and psychological violence may render as permissible the without approval of a parent or court ruling moving to another country, e.g. the country of origin of the person suffering the violence, an act that under normal circumstances is illegal and constitutes the crime of parental child abduction. In the case of proven violence or taking of interim measures for e.g, relocation of the offender, this may take place within a few days and in exceptional cases, even within hours. The court has the right to order any appropriate protective measure dictated by the circumstances, and even to prohibit the approach of the premises housing or employment of the applicant, the homes of close relatives, the children’s schools and shelters.

When is it legitimate for a third party (other than parents) to obtain legal protection for and on behalf of a minor child?

In cases of extreme urgency, the Prosecutor (if the physical or mental health of the child is in imminent danger) and the next of kin, if the father or mother violate their duties.

Can a parent commit the offence of child abduction?

Yes, if a parent removes the minor children from the custody of the other parent without the other’s consent or without a court order, with imprisonment being the foreseen penalty (up to five years).

What are the obligations and rights of the parents over their underage child under the Greek Law?

The care of a minor child is the duty and right of parents (parental care/custody) who practice it together. Parental care includes: a. the custody of the person b. the administration of the property and c. the representation of the child in every case or transaction or proceedings concerning its person or property. Parenting a child born during a registered partnership or within three hundred days from its termination or voidness belongs to both parents and is exercised jointly. Otherwise, the arrangements for children born within marriage apply accordingly.

What does the term “custody” of a minor child mean? Does ‘custody’ of an adult exist?

The term “custody of the child” is generic and includes indicatively the upbringing, supervision, education and training, as well as the determination of his place of
residence. This is a wide range of powers, which provide the parent who has exclusive custody of the minor by court order, the ability to take decisions on all these issues without the consent of the other parent. The concept of custody of an adult does not exist: an adult who cannot take care of his affairs due to physical, mental and / or intellectual weakness is placed under guardianship/curatorship and his legal representative before the authorities and services is defined (with many different regulatory options, depending on the personal history), while in the absence of an adult to an unknown place of residence for a long time or if he is prevented from returning, anyone who has legal interest may address a court in order for it to define a supervisor for the administration of the child’s property or for the regulation of an affair.

What should I do so that I get the custody of my minor children? 
Provided the children were born within wedlock / registered partnership, the award of custody of the minor occurs contractually, with parental agreement when a divorce by mutual consent or by a court order is issued. Each of the parents is entitled to request the award of custody. Most common and faster is the award of custody through interim measures, within which directly enforceable and binding order is issued. The time required for an order to be issued varies from several days to one year, depending on the background and the particular circumstances. Usually the custody of a child is awarded by an overwhelming percentage (98%) to the mother due to their close natural bond.

What are the case-law cases/circumstances where custody of the minor children has been given to the father? 
The abandonment of the child by the mother, stable accommodation and welfare of the minor child with his father, the personal opinion of the minor, when in the estimation of the court he has the relevant maturity for his personal opinion to be taken into account (e.g. age 16 years), the existence of a serious risk to his health and normal development in the case he is accommodated by and living with his mother. Note that the concept of serious risk is up till today interpreted extremely narrowly.

I reside in Greece. Can I take my child and return to my home country? 
As opposed to other legal systems, according to the Greek law, the parent who has exclusive custody of the minor child has the right to determine the residence of the minor, even without the consent of the other parent or a court decision that expressly permits it. Once an enforceable and valid order that awards a parent custody of the minor, without restriction as to the place of residence, is issued, yes, it is legal and permissible to move to another country (i.e. country of origin). If you choose another country, it should be considered, that the other parent may raise the issue of bad / abusive exercise of custody and request award of custody to the other parent, if due to this choice risks which endanger the smooth and balanced development and upbringing of the child are created.
What are the rights of the parent who has not custody of a minor?
The administration of the property and representation of the child in every affair, transaction or proceedings concerning his person or property, remain common parental powers. He also retains the right of access with his child, with the possibility of a penalty or imprisonment in a case of culpable violation of judicially regulated access. An independent right to maintain contact do also the ultimate ancestors of the child (grandfather - grandmother) have.

What kind of financial claims does a child have against his parents?
The minor child has and brings, through the person who exercises or has custody of him, his claims to cover his needs from the other parent or his ultimate ancestor (the latter under certain conditions). The maintenance is defined by the standard of living that existed during the cohabitation of his parents. The personal property of the minor shall not be exhausted. The maintenance claim ends with the age of majority, unless special and important reasons (e.g. education, health reasons) require the financial support.

What happens in the case property is left by will to an underage child?
The acceptance of property by a minor child takes place statutory by the “benefit of inventory”. That is, the minor is personally responsible for the obligations of the inheritance only to the assets thereof.

What acts are not allowed during the administration of the property of the minor?
Parents without the permission of the court with a specific and special reasoned order, do not have the right in the name of the minor, to dispose of, assign, mortgage and generally reduce the assets of a minor in all or part of it (property, securities, precious objects, commercial, industrial or other undertaking) to lease property of the minor for a time exceeding nine years, to lend or borrow, to waive safety requirements of the minor or to reduce such security, to enter into a compromise or arbitration arrangement (with only few exceptions), to guarantee or accept debt.

When is assisted conception allowed?
Medically assisted human reproduction (artificial insemination) is only allowed to address the inability to have children by natural means or to prevent the transmission of a serious illness to the child. Human reproduction with the method of cloning is prohibited, while the choice of the sex of the child is allowed only for medical reasons. It should be noted that these provisions apply only where the applicant and the gestational woman have their residence in Greece. Especially the artificial insemination after the death of her husband or the man with whom she was living in a free association, is allowed after judicial authorization only.
How are the relations of a father and a child regulated legally, in case the child was born out of marriage?

The custody/parental care of a minor child who was born and remains out of wedlock belongs by law to his mother. In case of notarial recognition, also the father gets parental care/custody, which he, however, exercises under specific conditions. In the event of judicial recognition, during which the father was the opponent, the father has no parental care nor does he replenish the mother, except under specific and exceptional circumstances. The father is certainly liable to pay regularly maintenance.
Which are the main sources of compensation for personal injury?

Greek law on damages for personal injury or death is primarily based on the Greek Civil Code’s (GCC) provisions on contractual liability (GCC articles 330, 334, 335, 336 and 382) and for tortuous liability / wrongful acts (GCC articles 914-938). In principle a civil claim for compensation can be brought against any person who by an act or omission has caused personal injury or death to a third person. Any such claimant can apply before Civil Courts¹ for recovery of all damages sustained, including pecuniary and non-pecuniary losses.

In case the wrongful act, omission or behavior that resulted to personal injury or death simultaneously constitutes a “criminal act” pursuant to the Greek Penal Code or other specific criminal laws, and criminal charges are brought against the responsible person, the injured person or the family of the deceased are entitled to intervene in the criminal proceedings as “civil claimants” in support of the criminal charge, and at the same time apply for the award of compensation from the Criminal Court. Any such compensation awarded is in most cases nominal and is deducted from the compensation awarded in any civil proceedings.

Public Social Security Organizations and Funds² cover medical and hospitalization costs (usually in full or sometimes a part thereof), and provide for sickness wages, disability pension, loss of maintenance pensions, and funeral expenses.

Which are the main sources of personal injury law?

Greek law provides for concurrence of contractual and tortuous liability when the act or omission that resulted to the damage, injury or death constitutes a violation of a contractual obligation and at the same is deemed as a “wrongful” (tortuous) act or omission. The claim for compensation can be filed by the victim (or the relatives of the deceased in cases of death) on the basis of both causes of action. However, if one of those bases is upheld, then the other is extinguished, unless, of course, the claim under one of the causes of action is broader or covers different types of remedies. Specifically:

a. Contractual liability for personal injury is basically ruled by GCC articles 330, 334, 335, 336 and 382. Article 330 GCC provides that “… a debtor shall be responsible for any default in the performance of his obligation resulting from an intentional act or negligence imputable to the debtor or to his legal representatives. There is negligence when the care required in the carrying out of business has not been furnished.” The compensation based on contractual liability covers all pecuniary loss of the victim, but not the non-pecuniary loss (moral damages), which is claimed solely on the basis of tortuous liability.

b. Tortuous liability for personal injury compensation is primarily based on GCC provisions on “wrongful acts” (articles 914-938), as these have been interpreted by case law and legal theory. Article 914 of the GCC which encapsulates the basic rule on tortuous liability / wrongful acts provides that “Whoever causes harm to another person contrary to the law and with fault/

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¹. Or Administrative Courts in case the personal injury or death is contributable to State officers or employees or the Greek State or other Public Legal Entity is vicariously liable for such injury or death.

². Public social security insurance is compulsory in Greece for all employees, workers and self-employed persons. Such social security insurance also covers (with some exceptions) the dependants of the insured employee, worker and self-employed person.
negligence, is liable to compensate him’. Accordingly, a claim for compensation may only flourish if the following elements concur, are invoked and proven by the claimant:

i. an unlawful act, behavior or omission on the part of the wrongdoer, the term “unlawful” referring to an act, behavior or omission that is contrary to or violates the legislation in force, i.e. national laws, presidential and ministerial decrees, public authorities’ circulars, European legislation, international treaties to which Greece is a party, customary law, moral and market standards etc.,

ii. fault or negligence on the part of the wrongdoer, including intentional acts, gross negligence and reckless behavior, as well as “common” negligence,

iii. harm or damage to the claimant, and

iv. causal link between the act, behavior or omission and the harm or damage sustained.

C. Strict Liability: specific laws provide for damages on a non-fault basis (strict-liability)3 or a quasi strict-liability basis, i.e. when the burden of proof is reversed and the claimant has no obligation to invoke or prove fault on the part of the wrongdoer, but the latter can exonerate himself if he proves that the damage was not the result of his own fault or of the fault of a person under his duty for whom he is responsible4.

Are there special provisions for remedies for specific types of accidents or causes of injury, such as for road traffic / transportation accidents, defective products, and employment related accidents?

Depending on the type of accident or cause of injury, there are special pieces of legislation which apply on top or are complementary to the general provisions of the GCC. Such specific provisions either expand or contract tortuous liability, and the main areas to which such provisions apply are, inter alia, the following:

a. Road Traffic Accidents:

   ▪ Law Γ Ν/1911 “On the Civil and Criminal Liability from Road Traffic Accidents” provides for strict liability of the driver, the owner and possessor of a motor-vehicle towards personal injury victims. Such strict-liability, however, is limited to the value of the motor-vehicle.

b. Carrier’s Liability in Railway, Sea and Aviation Accidents:

   ▪ Law 1815/1988 “Aviation Law Code” which applies only to domestic air-carriage, provides for a quasi-strict liability of the air-carrier to compensate the passenger who suffered personal injury during or by occasion of a flight (or to the passenger’s family members in case of fatal accidents), setting maximum upper limits of compensation, which however do not apply in cases of intentional or reckless misconduct of the air-carrier or the air-carrier’s servants.

   ▪ Law 3006/2002 which enacted the Montreal Convention “For the Unification of Certain Rules for International Carriage by Air”, applies to international flights and sets a quasi strict-liability regime similar to that of Law 1815/1988 on domestic flights. Law 3006/2002 expressly excludes any other cause of action for such accidents and the application of other domestic legal provisions, with the exception of the determination of the circle of persons entitled to compensation, which is ruled by the lex fori.


   ▪ Law 1593/1986 enacting the Convention for International Railway Carriage (COTIF–CIV) establishes a specific regime similar to that for international air-carriage, provides for quasi-

3. e.g. Law 551/1915 on compensation of laborers and employees suffering accidents in the course of their employment to which specific reference is made below.

4. e.g. article 6 of Law 2251/1994 (Consumer Protection Act), to which more detailed reference is made below.

5. Amended by the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, and by Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents, which will be in force the latest by the end of 2012 in all EU members-states.

Pavlakis – Moschos & Associates 105
strict liability of rail carriers, sets maximum compensation limits (not applicable in cases of intentional or reckless misconduct), and imposes its application as the sole cause of action of the respective claim for compensation.

c. Employment Related / Labor Accidents:

- Law 551/1915 “on Compensation of Laborers and Employees Suffering Accidents in the Course of their Employment”, as amended and in force, provides for liability of employers for compensation to employees / laborers for personal injuries suffered or death that has been a result of a “violent incident” that took place in the course or by the occasion of the employment, irrespectively of any wrongdoing on the part of the employer (strict liability), and even if a third person caused the damage and is also liable to pay compensation. The compensation provided is limited to a fixed amount 6. If, however, a violation of specific safety rules has caused or has contributed to the injury or death, the employer is liable for payment of full compensation (Law 551/1915, article 16).

- The Greek Code on Private Maritime Law (Law 3816/1958) stipulates that the employer / ship-owner is obliged to cover all medical costs of the seafarer who sustained personal injury in the course of his employment as well as to pay sickness wages for a specified period of time.

d. Defective Products:

- Law 2251/1994 on Consumers’ Protection, which enacted all respective European legislation into Greek Law, and specifically articles 6 and 8 on the liability of the manufacturer of defective products and of the provider of services respectively, provide for a quasi-strict liability regime towards the consumer / customer. The victim is not required to prove a wrongful act or omission and the manufacturer / provider may exonerate himself from the liability only if he proves specific defences enumerated in the law. However, any claim for non-pecuniary losses must be based on the GCC provisions on wrongful acts.

What types of remedies are available for personal injury cases?

In cases of personal injury or damage to the health of the person, the person who has sustained the injury or damage is entitled to:

a. Pecuniary Damages / compensation for material damage (article 929 GCC): medical expenses, compensation for the damage which the person has already sustained, any loss he will sustain in the future (e.g. loss of earnings) as well as any further expenses he will be obliged to spend in the future due to increase of expenses resulting from the damage. There also exists liability for compensation towards third parties (secondary victims), who had a lawful right to require the provision of services by the harmed or injured person and are deprived of such services.

b. Non-Pecuniary Damages / compensation for moral damage (article 932 GCC): Non-pecuniary loss 7 refers to physical and psychological damage resulting from insult to health, honor, dignity, and freedom of the victim. A claim for non-pecuniary loss can be filed for physical or mental pain and suffering caused to the victim due to the loss of his physical or mental integrity, temporary or permanent impairment or invalidity, permanent or long term aesthetic damage, damage to sexual function, psychological impact of the victim’s loss of earning capacity and loss of housekeeping ability, loss of personal and social life ability, loss of life expectation, suffering due to permanent or long term dependency from medical treatment, loss of ability for recreation, sports etc., discomfort, spoiled holidays and in general for loss of anything the victim would have been able to do or enjoy but is deprived from doing and enjoying as a result of the injury. Moral damages do not have a punitive or exemplary nature. However, one of the factors taken into account by the Courts in assessing the amount of compensation to be awarded is the gravity of the wrongdoer’s fault or negligence. The amount of the compensation awarded is at the

6. Law 551/1915 sets specific rules for the calculation of the compensation; in cases of permanent disability the compensation is approximately 1½ years salaries, and in cases of fatal accidents it does not exceed fifteen months’ salaries.

7. “Moral Damages” is a more accurate translation of the Greek term “ψυχική οδύνη” (psychiki odyni), i.e. psychological pain.
discretion of the Court, which, apart from the gravity of the liable persons’ fault or negligence, takes also into consideration factors such as the personal circumstances of the victim / claimant, the actual sorrow, distress and other consequences caused by the injury or death, in cases of fatal accidents the actual relationship and bond of the claimant with the deceased, the financial and social status of both parties and any other factor that may be invoked by the parties or is considered by the Court as relevant.

c. Compensation of article 931 GCC: Article 931 GCC provides that “The invalidity or disfigurement that has been caused to the injured person is particularly taken into consideration for the award of the compensation, if this affects his future”. After much controversy in the interpretation of this provision by case law and academics, it has now been repeatedly held by the Greek Supreme Court that article 931 establishes a separate and independent head of compensation in personal injury cases, for recovery of future pecuniary damage that cannot be fully determinable at present. The compensation awarded under this head of damage is “equitable”, assessed by the Court at its absolute discretion, and is now distinguishable from non-pecuniary damages (moral damages).

What types of remedies are available for fatal accidents?

a. Pecuniary Damages / compensation for material damage (article 928 GCC): medical and funeral expenses, compensation to those who had against the deceased a legal right for maintenance or for the provision of services. Such compensation refers to the amount that the deceased provided and would under normal circumstances continue to provide in the future for food, clothing, medical needs, education, recreation, transportation, and in general for all maintenance and living needs to such persons. The compensation for loss of services is calculated by reference to the cost of domestic or other help necessary in substitution of the services provided by the deceased.

b. Non-Pecuniary Damages / compensation for moral damage (article 932 GCC): The members of the deceased’s “family” are entitled to compensation for the moral damage (sorrow, psychological pain and suffering) suffered by them as a result of the loss of their beloved relative. The term “family” has been interpreted by jurisprudence and legal theory widely so as to include all persons who were connected with the deceased by the bond of close family relationship, namely: (i) spouses, (ii) children, irrespectively of whether they are minors or of legal age, (iii) parents/grandparents, irrespectively of whether they were living in the house or in close proximity with the primary victim or not, (iv) brothers and sisters, (v) in-law parents and sons or daughters in-law. Each one of the family members has an independent claim for moral damages, and such a claim and its height is neither precluded nor influenced by the fact that other relatives also have a claim for moral damages.

Who is liable to pay compensation?

As a general rule the person who must pay compensation to the claimant is the person primarily responsible for the damage, injury or death (article 914 GCC).

- Vicarious Liability: Pursuant to article 922 GCC a master or other person who has assigned to another the task of performing a service is liable for the damage caused by his servant/employee to a third party, unlawfully and during the course of his service/employment. In such cases both the servant/employee and the master/employer are jointly and fully liable towards the victim.
- Joint & Several Liability: In case the damage was caused by the act/omission of more than one person or more than one persons are liable concurrently, all of them are jointly liable. The same applies if more than one persons have acted simultaneously or successively and it cannot be ascertained whose act/omission caused the damage (article 926 GCC). This effectively means that a claimant has the right to apply for redress from only one or more of such jointly liable persons,

9. i.e. spouses (articles 1389 and 1390 GCC), relatives of deceased in direct line such as children, parents, grandchildren etc. (articles 1485 ff GCC), and siblings (article 1504 GCC), so long as it is proven that the deceased provided in fact maintenance / services to them.
10. Case law is not unanimous on the right of in-law relatives to claim for compensation.
as well as that payment of compensation in full by one of the liable persons releases all persons that are jointly liable from the respective duty. The person who has paid the compensation in its entirety, is entitled to seek recourse from the others. The court decides how the liability is distributed among them, depending on the measure of their fault, otherwise, if this cannot be established, the damage is divided among them equally (article 927 GCC).

- **The case of Road Traffic Accidents:** Pursuant to P.D. 237/1986 the insurance of motor vehicles for civil liability to third parties is compulsory\(^\text{11}\), and as a result an action can be brought by a claimant directly against the insurance company, notwithstanding the fact that the insurance company and the liable driver are jointly liable. In case a motor vehicle is not insured or its insurance coverage has expired or the operation license of the insurance company has been rescinded, as well as in hit and run cases, any such claim can be brought against the “Auxiliary Fund for the Insurance of Liability Arising from Motor Accidents” which operates in Greece.

**What is the limitation for bringing an action for compensation?**

- The general rule is set by article 937 GCC which provides that “Any claim deriving from a wrongful act is is prescribed after lapse of five years from the date the claimant has acquired knowledge of the damage and the party liable to pay compensation; in any event the claim is prescribed after the lapse of twenty years from the date the wrongful act was committed. If the wrongful act is also an act that is punishable under the penal law and under that law the prescription is longer, then this longer prescription is also applicable for the claim for compensation”.

- Special laws set different prescription periods for specific types of cases / accidents, the most important of which are the following:
  - **Road Traffic Accidents:** five years from the date of the accident\(^\text{12}\); for claims based on the strict-liability provisions of Law ΓπΝ/1911, the limitation period is two years from the date of the accident.
  - **Aviation Accidents:** two years from the date the aircraft arrived or should have arrived at its destination or the date when the carriage was interrupted both for international (Law 3006/2002, article 35) and domestic (Law 1815/1988, article 155) flights.
  - **Maritime Accidents (passengers’ claims):** two years from the date the passenger disembarked or should have disembarked (Law 1922/1991, article 16 and EC Regulation 392/2009, article 16).
  - **Railway Accidents:** three years from the date of the accident for passengers and five years from the accident for secondary victims (CIV, article 60).
  - **Defective Products:** three years from the date the victim has or should have acquired knowledge about the damage, the defect and the identity of the manufacturer; all rights are extinguished after the lapse of ten years from the date the product circulated in the market (Law 2251/1994, article 6, para. 13)\(^\text{13}\).

**What are the costs and fees for bringing an action for compensation?**

- **Judicial Stamp / Duty:** For the hearing of a case a judicial stamp/duty must be paid in advance of the Court hearing\(^\text{14}\), amounting to 0.48% of the amount of compensation claimed. Stamp

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11. With some exceptions for vehicles owed by the Greek State etc..  
12. The limitation for a direct action against the insurer for accidents prior to 14/05/2007 is 2 years. This prescription period was extended to 5 years by article 7 of Law 3557/2007, which amended article 10 of P.D. 237/1986.  
13. Pursuant to article 14, para. 5 of Law 2251/1994 even if a claim for defective products is brought on the legal basis of the GCC, the respective extended limitation period of the GCC (5 years) is inapplicable.  
14. The judicial stamp/duty is paid once for the hearing of the case at first instance.
duties of 0.036% and duties to the Lawyers’ Fund of 0.08% and to the Providence Fund of 0.08% are calculated and paid on the basis of the judicial stamp/duty.\(^{15}\)

- **Lawyer’s Fees:** The Greek Lawyer’s Code (Law 3026/1954) traditionally set compulsory minimum lawyers’ fees for every legal action or service performed by a lawyer. Law 3919/2011 abrogated the minimum lawyers’ fees, and as a result since July 2011 such fees are freely agreed between lawyer and client in writing.\(^{16}\) If no such agreement exists, the minimum lawyer’s fees, which have been re-entitled by Law 3919/2011 to “legal fees”, apply. Personal injury and fatal accidents compensation cases are often, if not customarily, undertaken on contingency agreement basis i.e. a no win – no fee (and often no costs) basis, the fee typically being a percentage of the compensation finally awarded (and paid) to the claimant, the height of which is agreed between lawyer and client.

- **Other Litigation Costs:** Other costs that are also paid in the course of litigation include the fees of a Court Bailiff for service of the lawsuit and other legal documents (e.g. invitation to defendants for appearance during the provision of statement under oath by witnesses), experts’ fees, witnesses’ costs, filing fees et. al., but the extent of these fees and costs depend on numerous factors such as the number of defendants, the complexity and requirements of the case etc.

- **Litigation costs and fees can be claimed for award by the Court, but in practice up to date Greek Courts customarily award only part of the actual costs and fees.**

\(^{15}\) e.g. for a claim of €1.000, the total amount payable is approximately (hearing duties €480 + stamp duty €17,28 + Lawyers’ Fund €80 + Providence Fund €80 =) €658.

\(^{16}\) Since July 2010, by virtue of Law 3842/2010, VAT applies to all legal fees.
BUSINESS ENTITIES
Which is the key piece of legislation governing Greek Société Anonymes?
A Greek Société Anonyme operates under the provisions of codified statute 2190/1920 and the provisions of the company’s Articles of Association (AoA).

What is the liability of the shareholders of a Société Anonyme?
The company is solely liable for its debts and obligations towards third parties only by recourse to the company assets. The liability of shareholders is limited to the amount they contributed to the share capital of the company. Nonetheless, under certain circumstances, shareholders can be directly liable for debts of the Société Anonyme, if pursuant to the doctrine of “lifting the corporate veil”, it is established that they have abused the legal personality of the Société Anonyme for the mere purpose of circumventing personal liability.

Are there any number/age and nationality/residency restrictions applicable on shareholders?
The Greek Société Anonyme can be established by one or more persons, legal or natural, Greek or foreign. There are no nationality/residency restrictions.

What is the minimum share capital required for the establishment of a Société Anonyme?
The minimum share capital required for the establishment of a Société Anonyme is currently EUR 60,000.00. However, there are higher thresholds for Société Anonymes operating under sector-specific legislation (e.g. credit institutions, investment services firms, insurance undertakings etc).

How is a Société Anonyme established?
Pursuant to statute 3853/2010, the establishment of a Société Anonyme is now implemented through a simplified procedure, the so-called “one stop system”. Under the new regime, all documents required for the establishment of the company are filed with a Greek notary public.

What assets can be contributed to the share capital of a Société Anonyme?
Contributions to the share capital may be in cash and/or in kind (the latter only if the minimum share capital of €60,000 has been secured in cash). Contributions in kind must consist of assets that are of a monetary value and have undergone valuation by experts whom the law acknowledges as competent to undertake such valuation. Valuation may be skipped if certain conditions are met; for instance, when the contributions in kind are securities or financial instruments falling under the provisions of the MiFID Directive 2004/39/EEC.
Is there an upper or lower price threshold for the issue of shares?
The share capital of the Société Anonyme is divided into shares that may be registered or issued to the bearer. The nominal value of each share cannot be lower than €0.30 or higher than €100.00. Shares can be issued with different nominal values, provided they were issued at different stages of share capital increases. The can also represent value above their par in which case the difference between the nominal value and the price actually paid is allocated to a special accounting reserve.

How are the initial share capital and any increase of the share capital paid up?
The minimum share capital of a Société Anonyme must be paid up in full no later than two months following its incorporation. The BoD must certify the payment of the capital by the shareholders and the relevant resolution of the BoD needs to be filed with the competent public authority and published in the Government Gazette. Partial payment of share capital in cash (provided that the minimum share capital has been promptly paid up in cash) is allowed on certain conditions but is disallowed in the case of contributions in kind (article 12 of statute 2190/1920).

Can a Société Anonyme acquire its own shares?
A Société Anonyme is entitled to acquire its own shares under the following conditions:
- The General Meeting of Shareholders has authorised such acquisition.
- The nominal value of the shares acquired, including the shares which the company had previously acquired and still retains, and the shares acquired by a person acting on behalf of the company, cannot exceed 1/10 of the paid up share capital. However, this limit is not applicable if the acquisition takes place for the distribution of shares to the company’s personnel (stock options) or to the personnel of an affiliated company.
- The acquisition concerns only shares that have been fully paid up.

Which corporate body is competent to decide changes to the capital of a Société Anonyme (capital increase or decrease) and under what conditions?
In principle, any change to the share capital of the Société Anonyme is subject to the competency of the General Meeting of its shareholders. However, the AoA may exceptionally authorise the BoD to increase the capital within a specific time period, which cannot normally go beyond the 5th anniversary of the company’s incorporation, and for an amount which cannot normally be more than the amount of the initial share capital (article 13 statute 2190/1920).
A decision to increase or decrease the share capital requires a quorum of at least 2/3 of the paid up share capital. If such quorum is not attained in the first meeting, the General Meeting is convoked again within 20 days from the initial convocation and the quorum required in this case is reduced to at least ½ of the paid up share capital. If this quorum is again not reached, the third convocation takes place after 20 days and a quorum is deemed to have been attained when at least 1/3 of the paid up share capital is represented. Nonetheless, the AoA may provide for higher (but not lower) majorities and quorum requirements.
The resolution of the General Meeting of the shareholders must be filed with the competent Prefecture (or the Chamber of Commerce for Société Anonymes incorporated under the so-called “one stop system”) and published in the Government Gazette.

Can the share capital fall under the minimum amount of EUR 60,000?  
The share capital must not fall under the minimum amount of EUR 60,000 unless the decision for its decrease simultaneously provides that the share capital will be increased at least to the minimum amount required by law.

What are the administrative bodies of a Société Anonyme?  
The key administrative bodies of a Société Anonyme are its General Meeting of Shareholders and its Board of Directors.

What is the minimum and the maximum number of members of the Board of Directors (BoD) of a Société Anonyme prescribed by law?  
According to article 18 (2) of statute 2190/1920, the BoD must consist of at least three members. There is no maximum number of board members stipulated by law.

Under which conditions can a legal entity be appointed as member of the BoD?  
The AoA of the company may provide that a legal entity can be a member of the BoD. In this case, the legal entity must appoint an individual for the exercise of the entity’s duties as member of the BoD.

How are the BoD members appointed and removed?  
BoD members are appointed and removed with a resolution of the General Meeting of the Shareholders. However, the AoA may provide that a shareholder is entitled to appoint members of the BoD not exceeding one third of the BoD’s total number. In this case, the AoA must also determine the conditions under which such right can be exercised. Directors appointed by a shareholder pursuant to the above may be removed at any time by the shareholder and be replaced by others. Moreover, the AoA may provide that the BoD elects replacements for members who have resigned, died or lost their right to be a member, provided that the General Meeting of Shareholders had not elected alternate members for such cases. Alternatively, the AoA can provide that in the event of resignation, death or loss of capacity, the remaining members of the BoD can continue the administration and representation of the company, provided that the number of its members is never less than three.

What is the term of BoD members?  
The term of the BoD may not exceed six years. Exceptionally, the term of the BoD is prolonged until the expiration of the deadline within which the next annual General Meeting must convene.

What is the process for meetings of the BoD?  
The meeting of the BoD is convoked by its chairperson or his/her substitute by invitation notified to its members at least two full business days prior to the meeting. The invitation must also clearly state the agenda of the meeting, otherwise a resolution is permissible if all members of the BoD are present or represented, and none objects. Moreover,
the convocation of the BoD may be requested by two of its members by means of an
application to the chairperson or his/her substitute. The BoD convenes at the registered
address of the company but may also lawfully convene outside Greece, if provided in the
AoA or if all members are present or represented in the meeting and no member objects.
The BoD may also hold a meeting by teleconference. In practice, BoDs often do not
convene and merely execute the minutes of the resolution.

Under which conditions is a BoD decision valid?
A valid BoD meeting requires a quorum of half of its members plus one, provided that at
least three directors are physically present. The AoA may provide that in the event of a
tie, the Chairperson of the BoD has the casting vote.

What are the main duties of the BoD?
The main duties of the members of BoD are indicatively the following:
- the duty of care
The directors’ duty of care towards the company derives from articles 18, 22 and 22a (1)
and (2) of statute 2190/1920. In light of their duty of care, BoD members must exercise
their representative and administrative powers with the aim of promoting the company’s
interests and in compliance with the relevant provisions of the law, the company’s AoA
and the lawful resolutions of the Shareholders’ General Meetings.
- the duty of loyalty
The directors have the duty of confidentiality with regard to the company’s affairs made
known to them in their capacity as the company’s directors. Moreover, they are not
allowed to pursue personal interests which are likely to harm the company’s interests
and are under the obligation to disclose any personal interests to the BoD. Finally, the
company’s directors may not compete against the company.
- other duties
The directors are prohibited to enter into agreements with the company (self-dealing),
unless specific conditions of the law are met; for instance, if such agreement has been
approved by a resolution of the General Meeting prior to its execution or if the contract
falls within the limits of the company’s day to day transactions with third parties.
Moreover, the BoD must provide to the General Meeting with specific information on
the company’s matters if such information is requested by its shareholders five full days
before said General Meeting.

What are the issues for which the General Meeting of Shareholders is exclusively competent
to decide?
The General Meeting of Shareholders is solely competent to decide on such matters as
the following:
- amendments of the AoA (e.g. increase or reduction of share capital, amendment of
  the company’s scope),
- the election (and removal) of the members of the BoD and auditors appointed
  pursuant to the AoA,
- the approval of the company’s balance sheet,
- the distribution of profits,
- the company’s merger, division, conversion, revival, extension of duration or dissolution; and
- the appointment of liquidators.

**Under what conditions is a decision of the General Meeting of the Shareholders valid?**

With the exception of resolutions requiring increased quorum and majority, the General Meeting of Shareholders is in quorum and validly convenes on the items of the agenda, when shareholders represented or attending themselves the meeting, represent at least one-fifth (1/5) of the paid-up share capital. If such quorum is not attained, the General Meeting of Shareholders meets again within 20 days from the date of the adjourned meeting. The new meeting is in quorum and validly resolves on the items of the initial agenda irrespective of the percentage of the paid-up capital being represented. The General Meeting of Shareholders validly resolves by absolute majority of the votes represented in the meeting.

**What exactly is the internal liability of the BoD members?**

The BoD members are liable towards the company for any fault committed by them (by act or omission) during the management of the company affairs.

**Under which conditions can BoD members be released from their (internal) liability?**

The BoD members may be released from liability in the following cases [Article 22 a (1) of statute 2190]:

- if he/she proves that he/she has managed the company’s affairs “with the diligence of a prudent businessman”. This means that the BoD member must prove that he/she has acted according to the diligence which is normally expected given his/her position as manager of a Société Anonyme.
- BoD members may be released from liability if it is proven that they acted in accordance with a lawful resolution of the General Meeting of Shareholders.
- Directors may be also released from liability according to the “Business Judgment Rule”. This rule applies when (a) the Director’s action constitutes a reasonable business decision and (b) such decision must have been made in good faith on the basis of sufficient information and exclusively in the company’s interest.

**Under which conditions may the company waive its claims against a BoD member for damages it suffered as a result of his/her unlawful action?**

The company may waive its claims against a BoD member for damages it suffered as a result of his/her unlawful action or reach a settlement following the lapse of a two-year period. The decision waiving the company’s rights is taken by the BoD on the conditions that: (a) the General Meeting of Shareholders consents to the waiver and (b) no opposition is made at the relevant meeting by minority shareholders representing at least one-fifth (1/5) of the share capital represented at the meeting.

**What is the statutory limitation applicable to the company’s claims against BoD members for damages?**

The claims of a société anonyme against the BoD members are subject to a three-year statutory limitation from the date the action was committed or to a ten-year statutory
limitation, if the action of the director that resulted in the company’s damage was intentional.

**What exactly is the external liability of the BoD members?**

The BoD members may be liable for damages towards third parties such as company creditors and the State.

The BoD members cannot be held personally liable for the company’s contractual obligations given that when they execute contracts they act in their capacity as managers of the company. However, according to Article 71 of the Greek Civil Code, BoD members of a société anonyme may be jointly and severally liable with the company for any liability arising from tort. Moreover, BoD members can be held liable under specific provisions of the Greek Bankruptcy Code. In this case, BoD members are directly liable towards the company’s creditors for restoration of the damages the creditors suffered due to the company’s bankruptcy. Moreover, BoD members are both civilly and criminally liable for, indicatively, tax liabilities of the company, and non-payment of accrued salaries and of social security contributions.

**Which public authority exercises the government supervision on Sociétés Anonymes?**

Government supervision has been delegated by the Ministry of Development to the Prefectures with the exception of certain categories of Sociétés Anonymes (credit institutions, insurance undertakings, listed companies), in connection with which supervision remains centralized and exercised by the Ministry.
Which are the accounting books that a société anonyme (SA) is obliged to keep?
The obligation of the S.A. to keep accounting books is derived from the Commercial Law provisions (articles 8 and 9), from the Codified Law (CL) 2190/1920 on Companies Limited by Shares (Sociétés Anonymes) and the Greek Code for Accounting Books and Records (CBR). In specific, pursuant to article 4 of the CBR all SAs, irrespective of their turnover and activities, must keep C’ Class accounting books.

Which are the C’ Class accounting books?
Subject to article 8 § 10, CBR does not define all the C’ Class accounting books that an SA is obliged to keep but is merely limited to the books that are kept according to the double-entry method in the spirit of the widely acceptable accounting principles in the context of any accounting system applicable.
Specifically, article 8 § 10 of the CBR imposes the compulsory keeping of the following books:-
1. Warehouse book
2. Inventory and Balance Sheet book
3. Shareholders’ book
4. Board of Directors (BoD) & General Meeting (GM) Minutes book.
The provision regarding the keeping of some of the above mentioned books is also being made in CL 2190/1920 on Sociétés Anonymes.
Moreover, further to the compulsory application of the Greek General Chart of Accounts (GGCA), the keeping of various logs and the indexing of the transactions registered therein, in subsidiary ledgers and in the general ledger, has become necessary.

What is the probative force of the SA’s books?
In contrast with the private documents, which constitute proof in favour of their issuer only if the opponent has submitted them, the books that are kept by traders, provided that they were lawfully compiled, have probative force also in favour of the trader keeping them, pursuant to article 447 of the Greek Code of Civil Court Procedure. As such are considered any books kept by the SA pursuant to 3.2.1. above.
In specific, according to provision 448 of the Greek Code of Civil Court Procedure, these books, provided that they have been compiled in compliance with the applicable legal formalities, constitute among traders or other persons obliged to keep similar books, conclusive evidence of their contents, but furnishing counter-evidence is also being allowed. Against persons though who are not traders and are under no obligation to keep similar books, the books kept by the SA constitute conclusive evidence only for the claim’s amount, when such claim is proved by other means and only for a period of one year, after the registration has been effected.
In addition, pursuant to article 30 of the CBR, the competent Tax Authority Chief Officer must recognize the facts that arise from these accounting books, in the context of determining the SA’s tax obligations.
Which persons are entitled to have access to the company’s commercial books?

Article 31 of CBR establishes the confidentiality of the company’s books by providing that without the Ministry of Finance approval no other authority, with the exception of the Tax Authority Chief Officer and those authorities that are equally ranked, are entitled to have access to the SA’s CBR books.

As far as private individuals are concerned, they can gain access to the contents of the company’s books either by a prosecutor’s order or after a respective application has been filed with the court, provided that certain requirements imposed by law are being satisfied (articles 901 et. seq. of the Greek Civil Code, 451 et. seq. Greek Code of Civil Court Procedure) and the applicant’s legitimate interest is being proved.

What are the consequences of either non-keeping or inefficiently keeping of the books?

Pursuant to article 5 of Law 2523/1997, certain fines can be imposed for the non-keeping or inefficiently keeping of the books that an SA is obliged to keep according to CBR. Moreover, in case of inefficient book keeping, according to article 30 of CBR, the books might be deprived of their probative value. In such a case, the tax authority, in the context of the SA’s audit, might not recognize the results that transpire by the books and to proceed to the unregistered calculation of the SA’s income, which means an approximate calculation irrespective of the data contained in the books.

In which language are the books being kept?

According to article 41 § 3 of CBR the SA’s books are kept mandatorily in Greek, whether the SA is a Greek company or a subsidiary of a foreign company in Greece. Infringement of the above mentioned obligation would result in lack of the books’ probative value. Nevertheless, for transactions that the SA is conducting abroad, the issuance of details in a foreign language is being allowed.

Is the statutory audit of the non-listed SAs’ financial statements mandatory?

The extent, to which the statutory audit of the SAs’ financial statements is mandatory, depends on various conditions contained in CL 2190/1920.

In specific, according to article 36 § 1 CL 2190/1920, the annual financial statements of SAs that exceed two out of the three amounts of article 42a § 6 CL 2190/1920, i.e.:

1. they have a total balance sheet of 2.500.000 €
2. they have a net turnover of 5.000.000 €
3. average number of employed personnel during the last financial year of 50 people

are being compulsorily audited by a certified auditor-accountant.

For the companies, the turnover of which is above 1.000.000 € and do not exceed the two out of the three above mentioned criteria, the audit of their financial statements is also compulsory, pursuant to article 36a § 1 CL 2190/1920 and can be conducted by a certified auditor-accountant or by two auditors, holders of University degrees, who are members of the Economic Chamber of Greece and are also holders of a professional licence to work as A’ Class accountants-tax consultants.

Companies which do not exceed the two out of the three above mentioned criteria and the turnover of which does not exceed 1.000.000 € are not subject to compulsory statutory audit. Nevertheless, they can either make a provision in their Articles of Association or decide that they wish their financial statements to be audited. In this case, the provision contained in the Articles of Association or the General Meeting’s resolution thereof should refer to a period of time covering at least five (5) financial years, according to article 36a § 2 CL 2190/1920.
What are the consequences of not conducting statutory audit?
Article 36 § 2 CL 2190/1920 provides that the statutory audit of the financial statements constitutes a condition for the validity of the decision of approval of the former by the GM. As a result, if the auditors have not conducted the respective audit of the financial statements, the GM is unable to decide thereupon and any decision that the former might have made for the annual accounts, without having been audited, will be null and void. Such nullity is considered an ipso jure nullity (i.e. occurring by automatic operation of the law), is absolute and cannot be remedied, either by the unanimous approval of the annual accounts by all the shareholders, or the presence of all the shareholders at the GM.

How are the statutory auditors being appointed?
According to article 36 § 3 CL 2190/1920 the ordinary GM is solely and exclusively competent for the appointment of the statutory auditors. Exceptionally, the auditors of the first financial year can be appointed by the SA's Articles of Association or by the extraordinary GM, which is being convened within three months from the company's establishment.

Is there a time limit on the reappointment of the statutory auditors?
In the spirit of article 36 § 3 and 36a § 3 CL 2190/1920 the reappointment of the statutory auditors is not possible for more than five (5) consequent financial years, whilst a subsequent reappointment of the same auditors is impossible before the lapse of two (2) full financial years.

Which are the auditors’ obligations?
A fundamental obligation that the auditors undertake is the following up of the accounting and administrative condition of the company, the auditing of the annual financial statements and the preparation of a report pertinent to this audit. In this framework, the auditors are not allowed to interfere with the company's administration, neither with the keeping of the company books, since the audit they conduct is merely a legality audit and not an audit on the purposefulness of the company's administration. Further to above mentioned primary obligations, the auditors have also the ancillary obligation to provide to the BoD all the necessary indications and suggestions. As such are considered those pertinent to any violation of the law that the auditors may have ascertained in relation to the accounting entries and any other issue related to the company's accounting organisation. Moreover, the auditors are obliged to report to the supervising authority any violation of the law or the Articles of Association that they have established in the context of the audit.

What are the characteristics of the statutory audit being conducted?
The auditors must exercise their duties in person and are subject to a confidentiality obligation in connection with the facts they become aware of, whilst such obligation is binding from the time they exercise such duties and for an indefinite period of time. The above mentioned obligation ceases to exist before the company's BoD and before any supervising authority in relation to violations of the law or the Articles of Association, which are being established whilst exercising their duties. Furthermore, the auditor must be independent and its audit must be objective.

How is the annual financial statements’ audit being conducted?
Pursuant to article 37 § 1 CL 2190/1920 following the end of the financial year, the auditors are obliged to audit the balance sheet and the income statements (annual financial
statements), in order to ascertain that the assets being contained in the balance sheet actually exist at the end of the financial year and that the income statements accurately reflect the results that the company has achieved.

In specific, the above mentioned audit is divided into formal and actual audit. In the formal audit what is being examined is the lawfulness of the financial statements’ signature and structure thereof. In the actual audit what is being examined is the extent to which the drawing up of the balance sheet and the income statements comply with the accounting entries, and also to what extent the valuation rules laid down in article 43 CL 2190/1920, have been adhered to. In addition, in this context the lawfulness of the profit distribution table is also being audited and specifically the order in which the profits are being distributed. Finally, according to article 43a § 3d, the auditors must, inter alia, also verify the agreement of the contents of the BoD’s report.

Upon conclusion of the audit, the auditors prepare an audit report which is being published according to the provisions contained in CL 2190/1920 and is thereafter being submitted to the ordinary GM. In this report reference is being initially made to the conducting of the audit and the methods employed, as well as the laws applied and the auditing standards having been considered thereto.

The next part in the report is the auditors’ conclusion which can be positive (audit report where full agreement was reached in the auditors’ opinions), positive with reservations or negative. In the last two cases, the auditors mention their reservations or justify the negative report. In any case the auditors’ conclusion concerns the extent to which the financial statements are lawful and accurate and reflect the company’s capital structure, its financial position and the financial year’s results. On the contrary, the auditors are not entitled to express their opinion on the company’s financial situation or the quality of its corporate governance, unless an issue arises concerning a violation of lawfulness.

What are the auditors’ rights in the context of the audit being conducted?

Pursuant to article 37 par.1 CL 2190/1920, the auditors in order to carry out their assignment are entitled to have access to any book, account or document including the minutes of the GM and the BoD, in order to trace any piece of information relating to the accounting and administrative condition of the company. Such provision is considered to be a peremptory law provision (ius cogens) and can't be circumvented by any provision to the contrary contained in the company’s Articles of Association. Hence, any refusal on the BoD’s side to provide the above mentioned documents or information is considered to be a criminal offence.

What are the applicable publication requirements for non-listed SAs?

Pursuant to article 7a CL 2190/1920 the information relating to non-listed SAs that are subject to publicity include the following: acts of incorporation, appointment and termination of the BoD members, amendments of the Articles of Association, all decisions relating to the increase or decrease of the company’s share capital, certification of the share capital’s payment, the annual financial statements, the company’s dissolution, the court decisions declaring the company either null and void or bankrupt or the court decisions which recognize the nullity of the GM’s decisions, the appointment and the replacement of the liquidators, the balance sheets of the liquidation and the deletion of the company from the Companies Registry. 

Pursuant to article 7b CL 2190/1920, the above mentioned publicity requirement is satisfied as follows: a) by the registration at the Companies Registry of the acts and details which are being published and b) by the publication in the Government Gazette (Bulletin on SAs & Limited Liability Companies) of the announcement of the registration in the relevant Companies Registry of the details subject to publicity.
The publicity requirement applies also to the invitation to the GM. According to articles 26 § 2 and 2a CL 2190/1920 the invitation can be published either in the, provided by law, newspapers, or to be sent by recorded mail or a notification sent by electronic mail.

**What is the method of distributing the profit which is derived from the SA’s annual financial statements?**

Article 45 CL 2190/1920 lays down a specific procedure for the profit’s distribution which is based on the company’s net profit. Specifically, the net profit is derived from the gross profit following the deduction of any expenses, any loss, the legally recognised depreciations and any other company charge or encumbrance. Accordingly, from the net profit:

- the amount for the statutory reserves provided for by the law or the Articles of Association is being deducted, and in specific the 1/20 of the net profit until the reserve reaches the 1/3 of the capital, subject to a prediction of a higher percentage provided for in the company’s Articles of Association.

- 35% of the net profit is being withheld for the distribution of the ‘first dividend’. The balance amount after the deduction of the amounts under items 1 and 2 is being distributed according to the provisions contained in the Articles of Association, i.e. distribution of an additional dividend, BoD members’ fees, formation of contingency reserves, increase of share capital etc.

**Is it possible the first dividend to be cancelled?**

After the amendment of article 45 § 2 par. b CL 2190/1920 by article 54 Law 3604/2007 and in contrast with the opinions supported in the past, it is being accepted that the GM with a majority of 70% of the paid share capital can decide upon the non-distribution of the first dividend.

**When does the claim for the dividend’s payment arise and when is it statute barred?**

The contractual claim upon the dividend can only arise upon the GM’s decision for the approval of the annual financial statements and the profit’s distribution. The above mentioned shareholder’s claim against the company for the dividend’s payment is subject to a five (5) –year limitation period in the spirit of article 250§ 15 of the Greek Civil Code.

**What are the legal consequences of the liquidation?**

The company’s liquidation procedure follows its dissolution (with the exception of bankruptcy where the bankruptcy procedures are followed) and its completion marks the end of the SA’s existence. During the liquidation stage, the company continues to exist and to operate within the context of the liquidation purposes, whilst it maintains its commercial and legal capacity. In the liquidation process the existing contractual relationships are preserved in force and the company continues to be legally represented before courts. As far as the members of the SA are concerned, the launching of the liquidation marks the cessation of the BoD’s powers, as the company’s administration and representation is being undertaken now by the liquidators. On the other hand, the company’s shareholders reserve fully their rights (i.e. minority, control rights) and continue to be held non liable with their personal assets for debts that the company has created.

**What is the method followed when liquidation is being conducted?**

Upon assumption of their duties, the liquidators close the previous company books and open new ones. Accordingly, they proceed with the compilation of the balance sheet of the liquidation’s commencement, which is being approved by the General Meeting and is thereafter being published.
Considering that the liquidation mainly aims at the satisfaction of the company creditors, the liquidators may sell the company assets, either as a whole or sections thereof. However, in view of the company shareholders’ and creditors’ protection from the depreciation of the sold assets, such sale cannot take place before four (4) months have passed from the launching of the liquidation (article 49 § 4 CL 2190/1920). In the above mentioned period of time, each shareholder or third-party can file an application with the Court of First Instance at the company’s registered seat in order to determine the lowest price of sale. The liquidators are also responsible for the collection of claims.

After the claims have been collected and the company creditors have been satisfied, the final financial statements, which reflect the whole of the liquidation’s administration and suggest the balance of the proceeds to be distributed, are being published. In this stage, after the company creditors’ claims have been settled, and provided that there is a balance amount of the company’s liquidated assets, the shareholders have the right to claim the return of their contributions.

After the conclusion of the above mentioned procedure, on the next stage the balance sheet of the liquidation’s finalization is being compiled, which, upon approval by the GM is being published and consequently marks the end of the company’s existence and its deletion from the Sociétés Anonymes Registry.

**What is the liquidation’s duration?**

There is actually no deadline imposed on the liquidation procedure. Nevertheless, according to article 49 § 6 CL 2190/1920 the liquidators are obliged to apply acceleration measures for the liquidation procedure after the lapse of a five (5) – year period from the liquidation’s commencement.
Do minority shareholders have specific rights as per Law 2190/1920?

Yes. Apart from the rights that each share grants to the shareholders (for example, right to participate in the General Meetings of the Shareholders (GMS), voting right, right to receive dividends, right to participate in any increase of the share capital), specific rights are granted by law to minority shareholders provided that they hold a certain percentage of the Share Capital of the company i.e. 1/20, 1/10, 1/5, 1/3. The higher the shareholding, the stronger the right provided for it. The goal of the minority rights is to put a barrier to the authority of the majority shareholders, who elect the Board of Directors, thus having full control over the Company. It is a counter-balance against the dominance of the majority shareholder(s). The tendency is to grant more rights and lower the thresholds (what recent laws such as 3604/2007 and 3884/2010 have done). The Articles of Association of the company may increase the protection of the minority shareholders by decreasing the required percentage (see below).

What kind of rights do they have?

Minority rights have to do mainly with procedural matters of the General Meeting of the Shareholders, information request, some veto rights and to some extent audit over the Company. These rights reflect mainly the control on a high level of the management of the Company, without interfering in the day to day management and the decision making process which is in the hands of the Board of Directors elected by the majority shareholder(s).

Are there different types of thresholds for minority shareholders?

Yes. There is a variation of thresholds i.e. 1/20, 1/5, 1/3. The higher the percentage the more significant these rights are.

What are the rights of shareholder(s) that have at least 1/20?

Shareholding of at least 1/20 of the share capital confers to the shareholders the following rights:

a) right to request a convocation of an Extraordinary General Meeting of the Shareholders. The Board of Directors has the obligation to convoque the said Extraordinary General Meeting of Shareholders at the date requested by the Shareholder provided that this date is not longer than 30 days from the date of the Meeting);

b) right to supplement the agenda of the General Meeting of the Shareholders that has already been convoked; if the Board of Directors does not respond to such a request, they may publish the notice by themselves;

c) right to request for a postponement of the General Meeting of the Shareholders;

1. Article 39 par. 1 of L.2190/1920
2. Article 39 par. 2 of L.2190/1920
3. Article 39 par. 3 of L.2190/1920
The temporary Chairman of the General Meeting of Shareholders is obliged to postpone the meeting for the requested day, which can not be fixed beyond a month; d) right to request specific information defined by the law to be provided in the GMS; e) right to request for the decisions in the GMS to be taken by roll-call vote⁴; f) right to request the disclosure to the Annual GMS of the amounts paid to Directors, managers and employees during the last two years⁵; g) right to perform a legal audit the company, following a Court order by the Single-Member Court of First Instance, if certain acts violate the provisions of the law or the company's Articles of Association or the General Meeting's decisions⁶.

What are the rights of shareholder(s) that have at least 1/3?

The second threshold of having at least 1/3 shareholding in the Company confers to the Shareholders the following rights:

a) to veto a decision of the GMS approving contracts between the company and persons that have a conflict of interest (i.e., members of the Board and their relatives, controlling shareholders and their relatives, connected undertakings, etc)⁷,

b) veto rights in major decisions of the General Meeting of the Shareholders concerning the company i.e.: the change of the company’s nationality, the modification of the scope of the company, the increase of the shareholders' obligations⁸, the increase of the share capital (unless such share capital increase takes place ex lege or is effected by capitalisation of reserves), the share capital decrease, the change in the distribution of profits, the merger, demerger, conversion, revival, extension of its duration or dissolution, the granting or renewal of the power of the Board of Directors to effect a share capital increase⁹.

What are the rights of shareholder(s) that have at least 1/5?

The third threshold of having at least 1/5 shareholding confers to the Shareholders:

a) the right to request information about the course of company’s matters and its financial situation¹⁰;

b) the right to audit the company, following a Court order by the Single-Member Court of First Instance, if from the overall course of business it is credible to believe that the management is not exercised according to the rules of fair and prudent management¹¹. Contrary to the legal audit provided for the 1/20 shareholding, the current audit is an audit of substance.

c) the right to veto a decision of the Shareholders Meeting to waive claims versus Directors¹².

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4. Article 39 par. 7 of L.2190/1920
5. Article 39 par. 4 al. b of L.2190/1920
6. Article 40 par. 1 of L.2190/1920
7. Article 23a par. 1b of L.2190/1920. If the approval is required ex post then the veto can be exercised by a minority shareholder(s) holding 1/20 of the Share Capital.
8. This is a strange reference in the law, conflicting the basic principle of the corporation that the Shareholder has no other obligation but to pay the subscribed share capital.
9. Articles 29 par. 3 and 31 par. 2 of L.2190/1920
10. Article 39 par. 5 of L.2190/1920
11. Article 40 par. 3 of L.2190/1920
12. Article 22a par. 4 of L.2190/1920

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What are the rights of shareholder(s) that have at least 1/10?
The forth threshold of at least 1/10 shareholding confers to shareholder(s):
- the right to request the Company to file a lawsuit against members of the Board of Directors \(^{13}\) to indemnify losses they caused to the company from their actions or omissions; and
- the right to veto a decision approving the granting of a guarantee in favor of members in the Board of Directors, controlling shareholders, connected undertakings, etc \(^{14}\).

Are there any other percentages with specific rights as per L.2190/1920?
There are also some other thresholds in the law, such as 2/100. The above percentage gives the right to any shareholder(s) having that percentage to request the annulment of any decision of the GMS, taken contrary to the law or the Articles of Association of the Company \(^{15}\).

Is there any specific right that a shareholder having even one share has according to the law?
Any holder of even one share has the right
- to ask (and the Company has the obligation to provide) specific information needed for the factual assessment of the items of the agenda in the GMS \(^{16}\);
- to file a lawsuit to recognize the invalidity of a Decision of the GMS \(^{17}\).
These can be considered as special minority rights, intending to control the controlling majority and the management of the company, contrary to the rights inherent to the share itself, which are the automatic consequence of the shareholding i.e. the right to participate in the GMS, the voting right, right to receive dividends, right to participate in any increase of the share capital, the right to receive the relative proportion of shares in case of capitalization of reserves and the right to receive the proportion of its shareholding from the proceed of liquidation of the company.

Are these thresholds fixed or can they be lowered by the Articles of Association of the Company?
The Articles of Association can:
- lower both the 1/20 and 1/5 thresholds, but not more than half of it;
- provide additional rights (such as information request) on different percentages \(^{18}\); and
- increase the majority needed to adopt decisions in the GMS, thus lowering the percentage of minority shareholders that can block decisions.

How can these rights be exercised?
The shareholder(s) who wish to exercise these rights have to prove their capacity as shareholder as well as the exact number of shares they own. This can be done for example by depositing the shares (if there are share certificates) to the Company or provide a relevant certificate that these shares are kept in a bank institution or by reference to the shareholders book in case of registered shares which have not been incorporated in titles. Any petition must be addressed to the competent body (the Board of Directors or to the GMS).

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13. Article 22b par. 1 of L.2190/1920
14. Article 40 par. 2 of L.2190/1920. In case the Company is listed this percentage is 1/20.
15. Article 39 par. 3 of L.2190/1920
16. Article 35a, par. 3 of L.2190/1920
17. Article 35b par. 4 of L.2190/1920
18. Article 39 par. 9 of L.2190/1920
Is there any put option of the minority shareholders?
With the amendment of law 2190/1920 in 2007 this right was added. Actually there are two put options: One versus the Company and one versus the Majority Shareholder.

a) Vis a vis the Company: One or more shareholders may request by the filing of a civil lawsuit, the repurchase of their shares by the company in the following cases:
   i) the GMS decides to transfer the siege social of the Company to another country; or
   ii) the GMS decides to introduce limitation in the transfer of the shares or a change of the objects of the Company or
   iii) in all cases provided for in the Articles of Association (on condition that the Articles of Association also provide for a relevant deadline for the filing of the civil law suit).

A general condition in all above cases, is that it is detrimental to the shareholder to remain in the company as Shareholder. The civil law suit must be filed within three (3) months from the day the relevant amendment in the Articles of Association takes place.

b) Vis a vis the Majority Shareholder; If a shareholder acquired after the incorporation of the company and still owes at least ninety five percent (95%) of the share capital of the company, one or more of the remaining shareholders may request through a civil lawsuit the purchase of their participation by this shareholder. The competent court for the hearing of this lawsuit is the Multi-Member Court of First Instance of the registered seat of the company. The law suit must be filed within a deadline of five (5) years from the time when the shareholder reached the above percentage.

Could the Articles of Association provide for additional rights?
Of course the Articles of Association can provide for additional rights as well as the procedure to be followed for their exercise, unless the law provides differently. There could be for example a right to information, a veto right, a right to appoint a member in the Board of Directors etc.

Can the Shareholders sign separate agreements (outside of the Articles of Association) defining their relations?
Based on the freedom of contractual relations, provided as a basic rule of our civil law (CC361) the Shareholders are free to sign any agreement between them (signing parties) in relation to their Shares and the Company and define their relationship. It is very common the shareholders to enter into a “Shareholders Agreement” to regulate subjects, like composition of the Board of Directors, first refusal rights etc.

Can the Shareholders Agreement have clauses contrary to the Articles of Association? And are they valid?
Yes, to the extent the relevant clauses do not reflect provisions of the law of public order. The parties are free to define their own rules as per freedom of contracts between parties19. The shareholders agreement however binds the parties for their relation but does not supersede the Articles of Association vis a vis third parties. As an example if the majority Shareholder violates its obligation to elect a number of Directors designated by the minority, he/she/it is in default and is liable to penalty or indemnity but the election of the board is valid.

What is the difference between a clause in the SHA and the AoA?
The Articles of Association is the document that regulates the operation of the Company and defines its modus operandi. Its clauses are binding for third parties as well. The

19. Article 361 of Greek Civil Code
Shareholders Agreement is a contract between specific (or all) shareholders that defines the relations between themselves. The Articles of Association bind all the shareholders as well as third parties that have any relation with the Company, whereas the Shareholders Agreement is binding only between the parties (shareholders) that have signed it. As a practical consequence, any violation of the Articles of Association could lead to nullity of any action whereas any violation of the Shareholders Agreement will lead to liability vis-à-vis the shareholders that have signed the Agreement.

What type of clauses do the Shareholders Agreements usually have?

A shareholders Agreement can have any clause (in theory) as a civil law contract. The main categories are the following: a) the way the company works (i.e. Board of Directors/Meetings of Shareholders/Administration), b) specific rights linked to the transfer of the shares (First Refusal Right, Put Option, Call Option, Tag Along, Drag Along etc), c) specific rights of shareholders (for example information request, etc), d) competition issues (usually obligation not to compete to the extent tolerated by the relevant legislation). Of course the above list is not exhaustive.

Could you explain the different rights linked to the transfer of the Shares?

The first typical clause is the First Refusal Right: any shareholder that wishes to sell his/her/its shares must first offer them to the other parties. In most cases the exact procedure is described in details in the Shareholders Agreement.

Another right is the Put Option: a specific shareholder has the right to offer its shares to another shareholder(s) at a specific time frame and the other shareholder(s) has (have) the obligation to buy.

The Call Option is exactly the opposite: a specific shareholder has the right to ask to buy the shares of another shareholder(s) at a specific time frame and the other shareholder(s) has (have) the obligation to sell.

The Tag Along is a right to protect a “minority” shareholder: if the majority shareholder wishes to sell its shares to a third party then the minority shareholder (who has the right to tag along) can ask and the majority shareholder has the obligation to sell the shares of the minority shareholder.

On the opposite direction, the Drag along is a right to protect the “majority” shareholder: if the majority shareholder wishes to sell its shares to a third party then he can ask the minority shareholder, and the minority shareholder has the obligation to, sell his or her shares along with the majority shareholder.

These are the common and typical rights but the parties (shareholders) are free to define their meaning as well as their relationship in general as they want, describing other rights and possibilities.

Why not have the above clauses in the Articles of Association?

Various reasons dictate the inclusion of a provision in a Shareholders Agreement and not the Articles of Association. First the law may not allow a regulation like the one the parties wish e.g. the way the Board of Directors is elected and its composition. Secondly confidentiality: the Articles of Association can be viewed by all the shareholders and third parties, the Articles of Association is valid for all shareholders. With the Shareholders Agreement you can define the relations between certain shareholders (and only between them). Thirdly there is a limit to what you can put in the Articles of Association: a typical example would be the Put Option. Up until recently it wasn’t allowed to have such provisions in the Articles of Association. With the latest amendment of the L.2190/1920, this is permitted.
What happens if there is a conflict between the Articles of Association and a Shareholders Agreement?

As mentioned hereinabove, the Shareholders Agreement, is an Agreement between Shareholders and is binding only between the parties that have signed it. The Articles of Association, from the other hand, is a document that is binding vis-à-vis all the shareholders and to some extent vis-à-vis third parties. So, to take one example, if there is a first refusal right in the Articles of Association, if not respected then the transfer of shares is null and void. On the other hand, if such right (first refusal) is provided for in the Shareholders Agreement and not respected, this does not affect the validity of any transfer, it only creates a right for damages (or whatever other sanction the parties have agreed upon) between the contracting parties.

In view of the above how can a Shareholders Agreement be enforced?

As any contract, the shareholders agreement can be enforced through courts or arbitration. The contracting party may be forced to buy or sell through a Court or arbitration decision or to perform the contract in a feasible way. Also any violation of the Shareholders Agreement creates a liability of the violating party for indemnity or agreed penalty. This means that the party who has suffered damages can seek compensation before the Civil Courts or the Arbitration Tribunal. In order to avoid having to prove the amount of damage, usually the Shareholders Agreement has specific monetary penalty clauses in cases of defaults (e.g. if one sells the shares although subject to a first refusal right, the agreed penalty may by equal to their value.
What are the territoriality rules?
The Greek income tax system taxes Greek SAs on their worldwide income. They may, however, offset the tax that they actually paid to a foreign jurisdiction, but not exceeding the amount payable in Greece.

Foreign legal entities are taxed on their income deriving from a source in Greece (actual or deemed). Foreign legal entities are also taxed on their income from their “permanent establishment” in Greece. Article 100 of the Greek Code of Income Taxation (“CIT”) has a list of cases in which a foreign entity is considered to have a permanent establishment in Greece, which is a factual issue.

In case the country of origin of the foreign entity has entered into a Bilateral Treaty for the Avoidance of Double Taxation with Greece, the provisions of the Bilateral Treaty regarding permanent establishment will prevail.

What is the applicable corporate tax rate?
The tax rate applicable to the profits of the Greek S.A. or a foreign branch of a societe anonyme is 20% for the financial year 2012 onwards (24% for the financial year 2011). In case of income from real estate property a supplementary tax of 3% is imposed on the gross income, which cannot exceed the corporate tax itself. Special and extraordinary taxes are imposed in cases of economic crisis.

Is there an advance payment requirement?
Greek SAs shall pay advance payments for the following year’s income tax at 80% of the current year’s income tax liability for corporate income tax return and at 100% especially in case of Greek banks or Branches of Foreign Banks established in Greece. In case of newly established SAs, the prepayment is reduced to 50% respectively, for the first three years starting from the entity’s registration in the tax authorities (Art. 111 CIT). SAs being transformed or merged pursuant to the provisions of L. 1297/1972, L. 2166/1993, L. 2190/1920 or any other specific laws shall not be subject to the above payment.

How is taxable income calculated? Which expenses are deductible?
Greek SAs keep accounting books of Category C’ of the Greek Code of Books and Data. In general, gross income is reduced by expenses properly documented and recorded to arrive to the net taxable income. The annual gross income is reduced by the depreciation of fixed assets and by the expenses incurred relating to their activity (“productive expenses”). A tax audit may not disallow an expense as unnecessary or unreasonable but only as non-productive. Despite this general rule, tax-deductible expenses are defined in a long list included in the Art. 31 of Greek Code of Income Taxation on the basis of
prior rulings and court cases. Expenses may also be disallowed on grounds of formality without recourse to the substance on the basis of the rules included in the Code of Books and Records.
The taxable income is calculated mainly by deduction from net profits of carried-forward losses, tax-free reserves, tax-free income or income taxed in a special way to the extent allowed.
Tax loss from a source abroad is offset only against profits from a source abroad. Permanent establishment of foreign companies may deduct part of their head office administrative expenses and in any case up to 5% of the same type of expenses of the permanent establishment itself.
Payments to companies (or their representatives) established in a preferential tax regime or in a non-cooperative state are by law non-tax deductible, unless they are proven real and in the normal course of business and do not have as a result the transfer of profits with the purpose of tax evasion or avoidance.

How are tax losses treated?
Tax recognized losses may be carried forward for five years provided that the books of the company are judged accurate and the losses were declared not later than the end of the financial year in which they were incurred. The carry back of the losses is not permitted.
Losses from foreign source shall be offset only against profits from source abroad.

Which are the main filing and payment requirements?
SAs are obliged to file their corporate tax returns by the 10th day of the fifth month following the end of their accounting year.
The corporate income tax and the advance payment are payable in 8 monthly installments. The first is due simultaneously with the submission of the corporate income tax return; the remaining 7 installments are payable not later than the last working date of the month following the month of submission. In case of one-off payment a reduction of 1.5% on the tax due is granted (Art. 110 CIT).
Other filings:
Periodical and annual VAT returns/Tax withholding returns/A list of the intra-group transactions shall be filed within 4.5 months after the end of the fiscal year according to transfer pricing rules/A list with the investment expenses under the provisions of the investments laws shall be filed/A declaration regarding the tax deduction for new productive investments in Greece according to investment Laws (tax exempt reserves still to be formed etc)/ On a trimester basis a list of the agreements (of the previous three months) between the company and other entrepeneurs/ A list with the clients or the suppliers of the company1/ A list with the agreed discounts to the buyer of the goods or the client receiving the services shall be notified to the head officer of the tax office 4 months earlier/ A list with the written-off bad debts/ A list of credit invoices/ The balance shall be filed to the tax office within 9 months after the closing fiscal year/ Enterprises employing more than 50 employees are obliged to file monthly periodical payroll tax returns.

How are Capital Gains taxed?
There is no general capital gains tax legislation in Greece. Any gains of enterprises are normally included in their taxable income, although conceptually they may not constitute “revenue”.

For the sale (or contribution to cover capital increase) of shares of a Greek S.A. non listed, a 5% transfer tax is payable prior to the transaction on the higher amount between the contractual sale price and the deemed sale price of the shares.

A 20% tax applies on gains from the sale of a business or its good will payable prior to the transaction. The same tax applies to gains from the disposal of business rights, including industrial property.

In the two cases above the tax paid constitutes an advance payment since the tax obligation is not exhausted but the profits are accounted in the annual taxable profits. The profits of SAs from the sale of shares listed in the Greek stock exchange, acquired from the 1st January 2012 onwards, shall be taxed based on the general income tax provisions. The sale of listed shares acquired up to 31.12.2011 is still subject to a transaction tax at a rate of 2‰.

The revaluation of real estate (land and buildings) owned by companies is mandatory every four years (L. 2065/1992). The overvalue, at the discretion of the enterprise, is offset against any carried-forward losses; The residual overvalue is taxed at the rate of 2% (in case of land) or 8% (in case of buildings) and it is capitalized, so that new shares are distributed without any charge to the shareholders. There is no obligation for capitalization according to L. 3756/2009 for companies applying IFRS. The payment of this tax exhausts any tax liability.

Which are the main tax withholdings?

SAs shall withhold income tax from their employees’ salaries on the basis of their projected annual income and the relevant applicable scale.

Other cases of tax withholdings exist such as:

i. Distribution of profits; From 2012 onwards a 25% withholding tax is imposed on profits distributed by S.A in the form of dividends, to members of BoD, profits distributed to personnel, as well as dividends or interim payments made to individuals or legal entities, Greek or foreign, independent of whether the payments is made in cash or in shares. If the distributed profits include participations in other companies, the tax already withheld is deducted. No tax is withheld when the beneficiary of the dividends is a parent company established in another member state of EU provided that the latter is eligible for exemption on the basis of the provisions of L. 2578/1998 and the Parent - Subsidiary Directive.

In case of profits from foreign companies to a Greek S.A, through a financial institution, 20% is withheld by the financial institution without the taxation being exhausted.

ii. Directors’ Income; The remuneration paid to members of the BoD for services provided on the basis of a work contract or a mandate agreement is treated as business income and is subject to a tax of 35%, provided that the members are not insured with the main social security organization (IKA). No further taxes are due.

iii. Royalties; The compensation or royalties paid to foreign enterprises or organizations with no permanent establishment in Greece are subject to a withholding tax of 25%, unless otherwise provided in an applicable Double Treaty.

iv. Entrepreneurs fees: Corporations must withhold a tax of 20% calculated on the fees of self - employed persons (lawyers etc).

Are there thin capitalization rules?

In accordance with Greek thin capitalization provisions (Art. 31 par. 1 case d’of CIT) accrued interests paid or credited to an affiliated company are not deductible to the
extent the total amount of loans from such companies exceed by average and during the fiscal year, three times the equity of the borrower (debt/equity ratio 3:1). As affiliated companies are those under material, direct or indirect, management or economic dependence, due to participation of the one in the capital or the management of the other or due to participation of the same persons in the capital or management of both. Such non deductible interests include the interests of bond loans payable to affiliated companies. Bond loans issued to or affiliated companies or guaranteed by affiliated companies are also added to the debt.

**Are there any transfer pricing rules?**

Greece's transfer pricing rules adhere to the OECD Guidelines and apply the arm's length standard. It is regulated by both a) the Ministry of Development (Art. 26 L. 3728/2008) and b) the Ministry of Finance (Art. 39, 39A CIT); a consolidation of the two competences (Market Police and Tax legislation) has been announced. Several documentation requirements are provided in both legislations (filing a TP report, maintaining of the documentation etc) the non compliance of which may result to severe penalties. However, the ministerial decision required for the establishment of the Ministry of Finance specific requirements has not been issued yet.

**Are there any special provisions for group tax relief?**

No, tax consolidation is not possible under Greek Tax Law. The company cannot transfer losses to another company of the same group.

**Are there any Taxes upon incorporation or capital increase?**

Law 1676/1986 introduced a special tax of 1% on capital concentration (establishment, merger of a company, capital increase).

A duty of 0.1 per cent has been added in favor of the Hellenic Competition Committee.

**Has Greece entered into Bilateral Treaties for the Avoidance of Double Taxation?**

Greece is a signatory party to 55 income tax treaties (the bilateral agreement with Bosnia and Herzegovina (ratified by L. 3795/2009) has not been brought into force yet). According to the Greek Constitution, international treaties, such as treaties for the avoidance of double taxation, prevail over any other domestic legislation.

Greece has also ratified treaties for the taxation of profits of shipping enterprises and airlines with several countries. Some of them overlap with the applicable treaty for the avoidance of double taxation.

**Which are the main taxes on owning real estate?**

A flat tax of 0.6% is levied on the deemed value of the real estate property owned by SAs in Greece, which is reduced to 0.1% for the buildings used by the company but not less than 1 euro per m2 of the building.

A special Real Estate Duty was recently imposed on real estate property with electricity supply on the basis of the square meter built surface of the building, its age and the price of the city zone. The duty is collected by the Public Electricity Company (DEH) or alternative suppliers of electricity through the utility bills for electricity.

A special annual tax is imposed at 15% on the value of the real estate of companies established in non cooperative states that own the freehold or usufruct of real estate located in Greece unless the ultimate owner (individual) is disclosed. The tax is calculated
on the deemed value of the real estate. Certain exceptions from the above tax are provided. Stamp duty at a rate of 3.6% is also payable on the rental income for commercial leases.

Are there any Sales or Turnover?
Special sales taxes apply to sales in Greece of several kinds of goods such as tobacco and alcohol. The tax applies to their sale price. Consumption taxes also are levied on petroleum products as well as on certain other categories of goods. An insurance tax is levied on the amount of premiums and the rights derived from the insurance contract.

Are there any special Taxes or Duties concerning the operation of the SA?
There are several taxes and duties in favor of the municipalities such as: cleaning and lighting fees/fees for the use of streets, squares and pavements/real estate ownership duty (TAP), currently calculated at a range between 0.25 % and 0.35 % on the official objective (deemed) market value of the real estate property/tax on revenues of hotels/tax on use of public space/tax on advertisements/duties on mobile phones etc.

What is the tax certificate?
In case the SA is audited by a chartered auditor, such auditors shall conduct a tax audit in parallel to the statutory audit and issue a tax certificate (Art. 82 par. 5 CIT). The auditor is obliged to mention the tax violations, as well as the non payment or inaccurate payment of taxes ascertained from the books and data kept. He shall complete and file his report within 10 days after the submission of the annual corporate tax return. In case no violation is reported the said accounting period will in principle be considered as tax audited.

Is there any special tax treatment of companies?
Companies of “L. 89” Compulsory Law 89/1967 exempted from taxation branches or offices of foreign companies established in Greece, after special approval by the Ministry of National Economy. For reasons of conformity with EU law, this law has been radically amended by Law 3427/2005. The major change is that such branches or offices are now subject to income taxation in Greece, pursuant to the general provisions. Still, their taxable income is determined in a favorable way, their revenue being calculated on a cost-plus basis regardless of their involvement in the transaction.

Ships and Shipping Enterprises
Ships under Greek flag enjoy a special tax treatment with several exemptions. Branches or offices of foreign companies dealing exclusively with the management, exploitation, chartering, insurance, average adjustments, brokerage of sale, shipbuilding, chartering or insurance of ships under Greek or foreign flag may be exempt from income taxation.

Are there any tax incentives under investment laws?
Law 3908/2011 provides for: (a) capital aids in the form of cash grant; (b) subsidy of leasing, which covers partial payment by the State of the installments relating to a lease which has been entered into for the use of new mechanical and other equipment
(Law 1665/86); and (c) tax-free reserves in order to encourage dispersion of industry throughout the country.
For more information see relevant Chapter.

What are the standard social security and welfare system contributions?
Employees and Employers are obliged to contribute to the employees Social Insurance Fund (IKA). The employees’ contribution is also withheld by the employer and calculated on the employee's actual gross salary (in cash or in kind). The total cost of contributions can reach 45.06% of salary (16.5% employee and 28.0656% on behalf of employer).

Is there any Directors' liability?
Under the Greek penal system, legal entities do not bear criminal liability. Therefore, in case of certain administrative violations, which constitute an offence as well, the Chairman of the Board of Directors and/or the Managing Director and/or the relevant legal representative bears criminal liability. Further more, the SA's representatives bear criminal liability for lack of payment of salaries due or illegal overtime work. Also, certain officers are jointly liable for taxes not paid by the SA under the circumstances described by the law.

2. The assessment of benefits in kind for the year 2011 (For a lunch 4,80€, food 9,60 €, residence 75,40 €, food and residence 301,50 € per month).
What are the main legal provisions regulating SA corporations with securities listed on the ATHEX?

Societe Anonyme, S.A. (Anonymos Etairia) is a company subject to increased state supervision, incorporated by one or more shareholders and governed by a board of directors. SA company is regulated by Law 2190/1920, as it has been modified. In terms of the Greek Law, SA is the type of company mainly listed on the Stock Exchange, due to its basic characteristics and particularly due to the fact, that the shareholders of a Societe Anonyme are not liable for the company’s debts with their own assets. This close relationship between stock market and societe anonyme is also evident in the legislation, as the regulation on listed companies is a combination of the law on SA companies and of Capital Market and Stock Exchange law.

More specifically, Law 2190/20 on SA companies, with its recent amendment by Law 3884/2010 which implemented the EU Directive 2007/36/EC, regulates the exercise of certain rights by shareholders of listed SA companies. On the other hand, Capital Market and Stock Exchange regulations also apply to listed SA companies and especially:
- Law 3401/2005 (implementing Directive 2003/71/EC) on the prospectus to be published when securities are offered to the public or admitted to trading;

Which authorities are responsible for the administration of the above legislation?

The Athens Stock Exchange S.A. (ATHEX) is the organization that administrates the regulated markets related to securities, derivative products, as well as, other financial products. Hellenic Capital Market Commission (HCMC), is the authority primarily responsible for the administration and enforcement of Greek securities laws and as such approves the prospectuses, imposes administrative sanctions and supervises the organised markets operating in Greece.
What are the Prerequisites for listing of stocks according to the Law 3371/2005 and the Athens Stock Exchange Rule book?

ATHEX operates two regulated markets: the Securities Market and the Derivatives Market. The securities of companies listed on the Securities Market are classified into different categories: (a) the Main Category, (b) the Exchange Traded Funds Category, (c) the Low Free Float and Special Trading Characteristics Category, (d) the Under Surveillance Category, (e) the Structured Financial Products’ and (f) the Fixed Income Securities Category.

When stocks are listed for the first time on the Main Category, the following prerequisites must apply:
- At the time of filing of the listing application, the legal status of the issuer must be in accordance with the provisions that regulate the incorporation and operation of SA companies.
- The legal status of the stocks must be in accordance with the provisions that regulate stocks of SA companies.
- The issuer must comply with the provisions in force regarding corporate governance.
- The stocks must be freely negotiable and fully paid up.
- The shareholders’ equity of the issuer must be at least 3,000,000 euro on a consolidated basis or, in the event of non-consolidation, the aforesaid criterion must be satisfied by the issuer alone.
- The issuer must have published its annual financial statements for at least 3 fiscal years, audited by a certified auditor.
- The issuer must report minimum profits before taxes for the last three years of 2,000,000 euro and profits before taxes for the last two years or EBITDA of three years 3,000,000 and positive EBITDA for the last two years.
- The issuer must have an adequate free float by not later than the time of receipt of the decision approving its admission for trading, in a percentage of at least 25% of the total stocks of the same category, distributed to at least 2,000 persons, none of whom holds more than 2% of the total stocks for which admission is being requested. In case such a float can not be achieved, the issuer must proceed to a public offering procedure by the disposal of the necessary number of stocks to the public. In such a case, the total value of the stocks offered must be at least 2,000,000 euro.
- The issuer must have undergone a tax audit, with respect to all tax matters, for all the fiscal years that its annual financial statements - with the exception of the most recent - have been published at the time of submission of the listing application.
- Shareholders, who at the time of approval of the listing of stocks on the Securities Market are participating with a percentage of more than 5% in the share capital of the issuer, may transfer during the first year after the listing, stocks that represent a maximum of 25% of their total stocks.

The above classification of stocks is subject to regular review, following which a stock may be transferred from the one Category to the other. Furthermore ATHEX Regulation...
foresees special terms for the admission of stocks in connection with particular types of companies such as insurance and construction companies.

**What is the procedure for the admission of stocks to ATHEX according to the Law 3371/2005 and the Athens Stock Exchange Rule book?**

The principal stages in applying for a primary listing are:

**Stage 1: Evaluation of the listing application by ATHEX**

The issuer together with the underwriter or sponsor, files an application for the listing of its stocks, accompanied by a supplementary questionnaire and the necessary supporting documents, specified by ATHEX decision 28/2008, as has been modified. ATHEX checks and evaluates the documents and the listing requirements and decides whether the issuer and its stocks are suitable for listing.

**Stage 2: Approval of admission**

The issuer's prospectus (as analytically presented below under 5) is drafted and submitted to the HCMC for approval. The prospectus is approved by the HCMC and ATHEX is informed accordingly. The issuer submits to ATHEX the approved prospectus in paper and in electronic form in order for it to be published on the ATHEX website. The issuer submits all the documentation specified by ATHEX decision 28/2008 and ATHEX approves the listing application.

**Stage 3: Commencement of trading**

The issuer submits to ATHEX the supporting documentation (by virtue of the ATHEX decision 28/2008) for the approval of admission. ATHEX accepts the beginning of trading which must take place within 15-calendar days of the approval.

The listing application is rejected by ATHEX in case of non-fulfilment of the listing requirements or of any ad hoc requirements which may have been set by ATHEX, or in case the prospectus is not approved by the HCMC.

**What are the requirements for a prospectus under Law 3401/2005?**

According to law 3401/2005 for the admission of stocks a prospectus must be published following approval by the HCMC, unless an exemption is applicable. The law allows the issuers to draw up the prospectus either as a single document or by way of 3 separate documents, a registration document, a securities note and a summary note. The prospectus must contain the necessary disclosure prescribed in EC Regulation 809/2004 (as implemented by art. 3-26 of the above Law), i.e. all information which is necessary for investors to make an assessment for the assets and liabilities, financial position, profits and losses and prospects of the issuer and the stocks to be offered to the public and admitted to trading. According to art.9 of Law 3756/2009, the prospectus issued for the admission of stocks for the first time, must be undersigned by a credit institution or an investment firm (EPEY) as underwriters.

The issuer must file the prospectus to the HCMC for approval. Before such filing, the issuer must have obtained a listing pre-approval by ATHEX. HCMC must provide
comments on the prospectus disclosure within 10 to 20 days. Following its approval, the prospectus must be published by the issuer and the offeror as soon as possible, by posting of the prospectus on their website, or by publication in newspapers or by handing out copies to the public. The prospectus is valid for 12 months from the date of its publication. Every new information or mistake included in the prospectus that may affect the evaluation of the stocks and arises after the approval of the prospectus, has to be included in a supplement document which must also be approved within 7 days from its submission and published accordingly.

The issuer, the offeror or the person asking for the admission of securities in a regulated market, their Board Members and any underwriter or advisor are liable for the information included in the prospectus towards anyone who has acquired securities within 12 months from its publication for damages attributable to information included in the prospectus.

Furthermore, Greek Law 3401/2005 regulates also the types of offering that do not require the publication of a prospectus (private placements), for which special provisions apply. In such a case, material information provided by an issuer or an offeror including information disclosed in the context of meetings relating to offers of securities, shall be disclosed to whom the offer is exclusively addressed.

What are the obligations of Issuers with stocks listed in ATHEX?

Following the admission procedure in the ATHEX, the company is subject to a series of obligations that apply only to listed SA companies.

i) Reporting Obligations

ATHEX Regulation in article 4 and Law 3556/2007 stipulates a series of obligations to the issuers for providing regular and extraordinary information, regarding their financial statements, the convocation and decisions of the shareholders meetings, the payment of dividends, the issuance of an informative note for company actions, etc. Specifically, Law 3556/2007 stipulates that listed issuers become subject to ongoing reporting obligations and must publish quarterly, half-year and yearly consolidated and non-consolidated financial statements. Additionally, a listed company must disclose any acquisition or disposal of own shares and any changes in its articles of incorporation. It must also make available to the shareholders the annual report which contains the published financial statements for the previous year including the audited annual financial statements, the board of directors report and other information on the company.

Furthermore, Articles 11-15 of Law 3371/2005 enforce the provision of information regarding the listed stocks and the associated with them investors’ rights, as well as information regarding financial statements and the structure of the issuers capital.

Article 15 of the same law foresees the obligation of the issuer to provide to HCMC every information the latter judges necessary for the protection of the investors and the good functioning of the market.

Issuers are also obliged, according to Law 3401/2005 to publish an annual informative document which includes information that the issuer has published or provided to the
public within the last 12 months. This informative document is also provided to the HCMC after the publication of the financial statements.

**ii) Obligation regarding inside information and market manipulation.**
According to Law 3340/2005 and decisions 5/204/14.11.2000 and 3/347/2005 of the HCMC as amended, listed companies must inform the public as soon as possible on any inside information which, directly concerns them and if it were made public, would be likely to have a significant effect on the prices of those stocks. Persons who possess inside information, by virtue of their membership of the administrative, management or supervisory bodies of the issuer or by virtue of their holding in the capital of the issuer, are prohibited from using that information to acquire or dispose for their own account or for the account of third parties financial instruments to which that information relates. According to art.7 of the same law, transactions or orders to trade and dissemination of information through the media, which give false or misleading signals as to the demand for or the price of a financial instrument are also prohibited. The issuers are obliged to inform the public without culpable delay of inside information which directly concerns them and to draw up a list of the persons working for them who have access to such information.

**iii) Transaction transparency obligations**
According to art. 13 of law 3340/2005 and decision 3/347/2005 of the HCMC, persons exercising managerial duties within an issuer are obliged to notify the issuer on the transactions conducted on their own account relating to its stocks. The issuer must transmit this notification to the public and the HCMC. Additionally, law 3556/2007 and decision 1/434/2007 of the HCMC, foresee that any shareholder who acquires or assigns shares in a listed company and as a result the percentage of his voting rights exceeds or falls under the thresholds of 5, 10, 15, 20, 25, 1/3, 50 and 2/3 per cent, must notify both the issuer and the HCMC as soon as possible. Any shareholder that possesses more than 10 per cent of the voting rights in a listed company, must also notify both the issuer and the HCMC in case of modification of his voting rights percentage that is equal or exceeds the 3 per cent of the total voting rights in the company. The issuer must disclose to the public any such significant changes of its shareholders.

**iv) Obligations imposed by Law No. 3016/2002 on Corporate Governance**
Law No. 3016/2002 intervenes in two basic fields of the listed SA companies: the composition of their board of directors (BoD) and the organization of their internal control. The BoD must comprise of executive directors, who deal with the day-to-day management issues of the company and are responsible for carrying out the decisions taken by the BoD, and non-executive directors, who are assigned with the promotion of all corporate issues The BoD must prepare an internal operation regulation, which is an internal corporate document that sets all the safety procedures for the successful operation of the company and is part of the general internal control system of the
company. The application of the internal regulation is monitored by the internal control system of the company, which includes all the inspection mechanisms and actions that cover the company’s activity on a full-time basis. Internal control is carried out by a special and independent body, the internal inspectors, which is appointed exclusively by the BoD.

Furthermore, Law 3873/2010 which adopted European Directives 2006/46/EC and 2007/63/EC sets forth the obligation for listed companies to disclose a Corporate Governance Statement as part of their annual report. The Statement must include specific information, such as the Corporate Governance Code to which the company is subject, a description of the main characteristics of the Internal Control System and Risk Management in relation to the financial reporting process and information on the rights of Shareholders in their General Meeting and on the composition and operating rules of the Board of Directors. According to this new law a company may deviate from the Corporate Governance Code to which it is subject, as long as its Corporate Governance Statement describes these deviations and explains the reasons for non-compliance. In case of inaccurate information in the Statement, the law stipulates the Board members are collectively responsible and liable.
Can we describe the Greek EPE as the equivalent to the English LTD? Is there any kind of confusion regarding the above terminology translation?

An LTD according to the terminology used in the jurisdictions influenced by the English law is a company limited by shares or by guarantee, namely a company, in which the participating members are called shareholders and are not by principle liable for the company’s obligations. This English term covers also the equivalent to the French Societe Anonyme (S.A.), to the German Aktiengesellschaft (A.G.), as well as to the Greek Anonimi Etaireia (A.E.). On the other hand, the Greek L.T.D. is the equivalent to the German Gemeinschaft mit beschränktem Haftung (GmbH).

As a conclusion, all the E.P.E.’s are L.T.D.’s. But not all L.T.D.’s are E.P.E.’s. Some L.T.D.’s can also be A.E.’s. Therefore, the term “L.T.D.” can only be used as a translation of the wording, but not as an accurate translation of the term L.T.D. of the English law, and it is preferable to use the term “Greek LTD”.

What is the main legislation regarding the Greek LTD?


What is the main legal principle of the Greek LTD regarding partners’ liability for the company’s affairs? What are the main exceptions to this rule?

A Greek LTD shall only be liable for its corporate obligations through the company property (Art. 1 para. 1). The partners shall in principle have no personal liability whatsoever regarding the company’s affairs, obligations, responsibilities and liability towards third parties or towards the authorities.

What can be the object of the company? Are there any legal restrictions?

The Greek LTD is a commercial company by law, even if it is not stated in its Articles that its object is commercial and irrespective of the object actually pursued by the company’s directors and partners (Art. 3 para. 1). The object cannot be illegal or contrary to the public order, or else the company may be annulled by a competent court (Art. 7 para. 1). In addition to the above, a Greek LTD may not carry on any business required by law to
be carried on exclusively by another type of company, usually a Societe Anonyme (A.E.) (Art. 3 para. 2).

How many parties are needed to incorporate a Greek LTD and how are they called?
The Greek LTD can be formed by one or more natural or legal persons. These persons are called “partners” and not shareholders.

If the Greek LTD is formed by one person, does this person have additional personal liability for the obligations of the company?
No, as it is specifically provided in Article 43a the sole partner of the single-member Greek LTD has no personal liability whatsoever regarding the liability of the company due to the mere fact that he/she is the sole partner. Nevertheless, the possibility to lift the corporate veil on the basis of Article 281 of the Greek Civil Code which forbids the abuse of rights cannot be excluded, according to the specific circumstances of the specific case.

If the Greek LTD has only one partner, does it have to abide by any exceptional rules?
If either the company is formed by one partner or at a later stage after its formation all company participations are concentrated in the hands of one partner, then it shall observe the following exceptional rules (Art. 43a):

- It shall obligatorily include in the company name the phrase “sole – membered limited liability company”.
- It shall have the Minutes of the “Partner Meeting” endorsed by a notary public, having been present at the Meeting.
- The same partner is not allowed to be the sole partner of another Greek LTD.
- A sole-membered Greek LTD is not allowed to have as its sole partner another sole-membered Greek LTD.
- Contracts signed and executed between the company and the sole partner shall be include in the Minutes or executed in writing, unless they refer to any matter included in the current company transactions which are executed under normal circumstances.

What is the minimum capital requirement to form a Greek LTD and how is the company capital divided?
The minimum capital requirement is four thousand five hundred (4,500) euros (Art. 4 para. 1). The company capital is divided in “portions of participation”. The nominal value of each portion of participation can only be defined at an amount of thirty (30) euros or a multiple thereof (Art. 4 para. 1 and 2).

Is it possible to have authorized company capital, wholly or partially?
No, the company capital can only be wholly paid up, and shall have already been wholly paid:

- at the time when the contract of its incorporation is concluded (Art. 4 para. 1), or
- at the time when any contract for the increase of the company capital is concluded (Art. 40 para. 4).
Shall the company capital be paid only in cash?
No, the company capital can also comprise contributions in kind on condition that:
- At least half of the capital is paid in cash (Art. 4 para. 1), and
- The procedure defined in law is followed (Art. 5).

Is there a possibility to represent the company’s portions of participation by shares?
No, the Greek LTD cannot issue shares, nor can it issue any other kind of document incorporating the rights of participation in the company (Art. 1 para. 2). The only document, which the company is allowed by law to issue and deliver to its partners, can be a certificate, which shall only verify the capacity of the person as a partner. The company cannot issue a separate document representing each of the multiple portions of participation of a partner, but only one document for the whole participation of each partner. In such a certificate it shall explicitly be declared that it does not constitute a security. (Art. 27 para. 2).

How is a Greek LTD incorporated? What is the procedure to be followed?
1. According to the new legislation the Notary Public is the “One Stop Shop” for the Greek LTD.
2. The founders of the company submit to the Notary Public all documents necessary in order to:
   - Incorporate the company;
   - Register the company in the General Commercial Registry (GEMH);
   - Publication in the Official Gazette;
   - Registration in the competent Chamber;
   - Registration in the relevant social security organization;
   - Registration with the relevant tax authorities and granting of Tax Registration Number (AFM).
3. For a company with the minimum capital of 4,500 euros the founders shall have to pay to the Notary Public (or to the bank) all duties and taxes related to the incorporation, the registration in the General Commercial Registry and the Chamber, the Lawyers Health Insurance Fund, the issue of necessary certified copies and certificates which totally amount to 100 euros approximately, as well as the notary public’s fee of approximately 250 euros +23% VAT. Additionally a Capital Concentration Tax of 1% on the overall capital shall have to be paid. When the notarial deed of incorporation is signed, a lawyer’s presence shall only be obligatory, if the company capital equals to or exceeds the amount of 100,000 euros.
4. After approval of the above documents, the incorporators themselves, or their legal representative with a power of attorney granting specific authority to do so, have to appear before the notary public and sign the contract of incorporation, in which the Articles of Incorporation shall be included (Art. 6 para. 1).
5. In the above contract at least the following elements shall be obligatorily included (Art. 6 para. 2):
   - The name, surname, profession, domicile and nationality of the partners;
   - The registered name of the company;
The registered office, which shall be within the limits of the Greek territory;
- The object of the company;
- The nature of the company as a limited liability company;
- The overall company capital, the participation of each of the incorporating partners as well as the number of the portions of participation of each partner;
- A declaration by the founders that the overall company capital has been paid up;
- The contributions in kind, if any, their evaluation, the name of the contributing partner and the total value of all contributions in kind; and
- The duration of the company.

6. In addition to the above, if the partners decide to do so, then they may also include in the contract agreements concerning any of the following subjects (Art. 6 para. 3):
- Supplementary contributions and other ancillary contributions not constituting contributions in money or in kind;
- Prohibition of competition by the partners;
- Total prohibition of transfer of the company participation of a partner or transfer only after fulfillment of certain provisions;
- Withdrawal of a partner from the company;
- Dissolution of the company for any reason not provided for by law; or
- Procedures for audit of administration.

7. The Notary Public shall issue a Certificate confirming the date of incorporation, name and company type, GEMH number, Tax Registration Number (AFM), Chamber registration number and number of Official Gazette publication.

8. As an exception, companies created through transformation, and companies for which an administrative approval or decision is needed, are not incorporated by the One Stop Shop. Instead, the incorporators sign the notarial deed of incorporation and then proceed directly to all procedures necessary before the competent authorities.

Who may be the administrator and legal representative of the Greek LTD and how do they act?
The administrator of the Company’s affairs and the legal representative of the Company is called “Director”. There can be one or more Directors. In case there is no specific provision in the Articles, then all partners of the Company shall act as Directors by law (Art. 16).

In case the Directors are more than one, they shall act collectively, unless otherwise provided by the Articles or by a resolution of the Company’s Meeting of Partners (Art. 17).

What is the liability of the Director(s)?
The Director(s) shall be liable for compensation against the company, each partner or any third party, in case they have violated any of the provisions of Law 3190/1955 or of the Articles of Association or in case they have acted in fault during their administration or the representation of the company (Art. 26).

What is the supreme organ of a Greek LTD, how is it formed and what powers does it have?
1. The supreme organ of the company is the Meeting of Partners. It is also called in practice the General Meeting.
2. It is formed by all partners of the company at the time it is held.
3. It has full power and authority to decide on any of the company’s affairs, even if this is not specifically stated in the Articles (Art. 14 para. 1).
4. The Meeting of Partners has exclusive competence to decide on the following issues expressly sated in Art. 14 para. 2:
   - Amendments of the Articles of Association;
   - Appointment or revocation of Directors, or discharge of their responsibility;
   - Approval of the financial statements and the appropriation of profits;
   - Bringing an action against the organs of the company or against any of the partners as individuals to enforce company claims for compensation regarding their acts or omissions during company incorporation or operation;
   - Extension of duration;
   - Merger;
   - Dissolution as well as appointment and revocation of liquidators; and
   - Any other matter specifically provided for in Law 3190/1955.

Who can convene a Meeting of Partners? What is the procedure?
The Partners’ Meeting is convened by the following persons and in the following cases:
   - By the Directors in writing with a notice to be served to them at least eight (8) days before the date of the Meeting (Art. 10 para. 2).
   - By the minority of partners holding at least 5% of the company capital, after application to the Directors, non action by the Directors, petition to the competent court and a relevant court decision granting them the authority to convene the Meeting themselves (Art. 11).
   - By any partner, irrespective of its participation in the company capital, in case the Directors have not convened the annual Meeting for approval of the company financial statements within three (3) months after the end of the fiscal year, to which these statements refer, and after petition to the competent court and a relevant court decision granting to the partner the authority to convene the Meeting (Art. 10 para. 3 and art. 11).

Can a Meeting be held without any procedure?
Yes, on condition that all partners of the company representing 100% of the capital agree on that (Art. 10 para. 4).

How are the resolutions passed in a Meeting of Partners? What is the principle of double majority?
A resolution can only be passed in a Meeting of Partners by a majority of more than one half of total number of partners representing more than one half of the total capital of the company (Art. 13). In the Greek LTD there are no quorum rules. The principle of double majority means that no resolution can be passed, unless there is, at the same time, a majority on the number of partners (majority of partners) and a majority on participations on the company capital (majority of capital). There are also certain
important matters, regarding which an extra-ordinary majority or unanimity is required by law. The Articles may also provide for extra-ordinary majority or unanimity.

How are the company profits distributed?
At least 1/20 of the net profits shall be reserved each year as a reserve fund obligatory by law, until the reserve reaches an amount equal to 1/3 of the company capital (Art. 24). The Articles may provide for an additional reserve fund. After the above amount has been deducted from the net profits as these are evidenced by the annual financial statements for the preceding fiscal year, each partner has a right to the remainder, equal to his/her percentage in the company capital, unless otherwise provided for in the Articles (Art. 35).

How can the company be dissolved?
The company may be dissolved in one of the following cases (Art. 44):
- Whenever the Articles so provide;
- By a resolution of the Partners Meeting with a majority of at least ¾ of the partners representing at least ¾ of the overall capital;
- By a court decision after petition filed by partner(s) holding at least 10% of the capital and upon serious grounds;
- If the company is declared bankrupt.
Publicity formalities

Both upon establishment and during its entire duration, a Limited Liability Company is subject to publicity formalities, as provided in article 8 of Law 3190/1955 (Law about Limited Liability Companies).

The Articles of Association, as well as any amendments thereof must be filed, according to the newly established One Stop Shop procedure and be published in the Government Gazette. The financial statements of a Limited liability company (with the exception of the notes to the financial statements) and the auditors’ report (where applicable) are published annually in the Government Gazette and in selected political and financial newspapers (articles 22 par. 4 of Law 3190/1955, as well as 43b par.5 and 26 par.2 of Law 2190/1920 (Institutional Law about S.A Companies).

The Company cannot plead against third parties actions or data for which the publicity formalities have not been respected, unless their knowledge can be proved. Acts or information published cannot be brought against third parties within fifteen (15) days of their publication, in case that those third parties prove that their knowledge was not possible (article 8a of Law 3190/1955).

Accounting Period, Accounting Books and Records

For Greek tax purposes an accounting period is one of twelve months. However, on the initiation of activity the first accounting period may extend over a period up to 24 months. The fiscal year must either end on 30th June or on 31st December.

Corporations are required by the Code of Books and Records (C.B.R.) to keep double entry accounting books, inventory books, General Assembly minutes’ books and director’s resolutions books (article 7 of Presidential Decree 186/1992). In addition to the books provided by the C.B.R., the Law 3190/1955 in article 25 also provides that the managers of the Limited Liability Company are obliged to keep a Book of the Partners, where the names of partners, their nationality and address, as well as their contributions are recorded.

The structure of the accounts must follow the principles of the Greek General Chart of Accounts or, if the entity is a bank, the Banking Chart of Accounts. Both the Greek company law and the Chart of Accounts prescribe the form of presentation of financial statements, which is in line with the EU Fourth Company Law Directive.

The annual financial statements

Law 3190/1955, in article 22, provides that the annual financial statements of a Limited Liability Company (balance sheet, operating results etc.) are drawn once by the director(s) of the Company, based upon the inventory of assets and liabilities of the Company, at the
end of the fiscal year. These annual financial statements, along with the relevant reports of the directors and the auditors of the Company, are subject to the publicity formalities, as provided in article 8 of Law 3190/1955.

Audit Requirements

While the General Assembly of Partners and the Director or Directors are the two main decision making organs of a Limited Liability Company; a third organ, which is the auditors shall be added in the event of a “large” Limited Liability Company.

According to article 23 par. 2 of Law 3190/1955 in combination with 42a par.6 of Law 2190/1920, in order for a Limited Liability Company to be considered as large, two of the following conditions must be fulfilled: a) total assets over €2.500.000; b) net turnover over €5.000.000; c) average personnel employed during the fiscal year, 50 persons.

Limited Liability companies that do not meet the above-mentioned criteria, which must be met so that they are considered as large companies and therefore are subject to an audit by a certified auditor, are exempt from a statutory audit altogether.

Entities, which satisfy two of the three criteria must be audited by a recognized auditing firm of certified auditors (i.e. a member of the Institute of Certified Auditors “SOEL”).

Auditors are appointed by the Assembly of Partners and their appointment is subject to the publicity formalities of article 8 of Law 3190/1955.

Tax Audit Certificate and “Annual Certificate”

The Annual Certificate provided by par.5 article 82 of Law 2238/1994, applies also on Limited Liability Companies, whose annual financial accounts must be audited by Certified auditors as provided by Law 3693/2008. The tax certificate is issued after an audit conducted in the same time with a control of the financial management, concerning the implementation of tax provisions.

Tax violation, as well as non-attribution or even incorrect attribution of taxes, which are recorded by the Audit, based on books and data of the audited companies, are reported in detail on this Certificate.

In cases that the Certificate does not include observations and findings of tax law violation, then the annual regular tax audit is not conducted, with the reservation of the provisions of article 80 of Law 3842/2010 (system of selection of cases for audit).

The audit focuses on specific tax issues, that are defined in a specific audit program which is published by the Ministry of Finance in cooperation with the Greek Accounting and Auditing Oversight Board (ELTE), is updated annually and is in accordance with everything defined by the International Standard on Assurance Engagement - ISAE 3000.

Taxation

According to article 109 of Law 2238/1994 (Income Tax Code), as recently amended by Law 3943/2011, for the legal entities of article 101 par. 1 (that includes the domestic limited liability companies), the tax imposed is calculated at the 20% upon their total taxable income.

Under special provisions of article 10 of Law 3943/2011, the above mentioned rule applies for the income of the fiscal year 2012. Especially for income produced in fiscal year 2011, the relevant rate has been defined at the percentage of 24%.

Furthermore, the Law 2238/1994 in article 55, as amended by Law 3943/2011, provides that for profits that are distributed by domestic limited liability companies to individuals or legal
entities, both domestic and foreign, a tax of a rate of 25% is withheld. By this withholding, the tax obligation of the beneficiaries, as far as this income is concerned, is exhausted. These provisions apply to distributed profits as from 01.01.2012 and after. Especially for profits distributed within the year 2011, the withholding of tax is defined at the rate of 21%.

**Knowledge of the state of the corporate affairs**

In article 34 of Law 3190/1955 it is provided that each partner is entitled, during the first ten (10) days, after the end of each calendar trimester, to be informed in person or by a proxy of the state of the corporate affairs and to examine the Company’s books and documents. Any conflicting provision of the Statute is invalid.

**Financial relations of the Company**

According to article 32 par.1 of Law 3190/1955, loans to the Company by the partners, which are secured with a charge upon the company’s assets, are prohibited. The provision for such a security (charge), despite the above-mentioned prohibition, is invalid. According to settled case law of Greek courts, this prohibition results to the nullity of the security and not of the loan itself. Moreover, payment by the Company of loans to the partners is considered to be void, in the cases that this payment annuls, partially or in total, the satisfaction of third parties’ claims that exist at that time (article 32 par. 2 of Law 3190/1955).

Finally, in the case of the Company’s dissolution for any reason, other than bankruptcy, the claims of partners, deriving from loans, are satisfied after the payment of other debts of the Company.
GENERAL AND LIMITED PARTNERSHIPS (O.E. and E.E.)

Basic characteristics of a general partnership
A general partnership is a company with legal personality, whose partners are jointly responsible against third parties for company’s obligations. Such responsibility is considered as personal, direct and unlimited.

Basic characteristics of a limited partnership
A Limited partnership is a company with legal personality, which consists of at least one (unlimited) partner responsible against third parties for all company’s obligations and at least one (limited) partner whose responsibility is considered as limited.

How many parties need to concur in order to establish a general / limited partnership?
In order to establish a general / limited partnership, it is necessary to have an agreement of at least two parties (natural or legal persons). Natural Persons are required to be at least eighteen years old. In order for a minor to get involved in the establishment of such company, there is an extra requirement of getting a judicial permission.

Liability of the general partner
All general partners are jointly responsible with their personal assets. Therefore, company’s creditors are able to claim the partnership’s debts directly from the partners. Such liability is imposed by the Law and is not possible the partner’s agreement to exclude such liability or to include different content.

General partners are jointly and personally liable along with the company. Thus, company’s creditors are not obliged initially to request their claims by the partnership company, but they can immediately request their claims by the general partners. A general partner’s liability is unlimited. Thus, each partner is liable with all his personal assets and not up to a fixed amount. Additionally, all partners are jointly liable, id est each creditor may pursue payment, either by the company, by any partner or by all (partners and company).

A general partner as he obtains corporate status is able to become bankrupt, independently from the company if he personally fails to pay his debts, or he may become bankrupt along with the company, if the company becomes bankrupt. Moreover, if there is a judicial decision against the company, then the creditor can enforce it against the general partners too. Therefore, it is possible for the creditor to take legal action only against the company, but afterwards to enforce such decision against all the general partners.
General’s partner liability begins at the time he obtains the corporate status. Moreover, the partner that ceases, in any way, to be partner of the company, then from the moment that this is published, the general partners ceases to be liable for the company’s debts arising after such publication. However, the partner is still liable for previous debts, even if such debts get overdue after he ceased to be partner. Such liability is terminated five years after the above mentioned publication.

The general partner that has personally paid a company’s debt to a creditor, is able to request by the rest (company or partners) the money that he was obliged to pay to the creditor, as at that time he simultaneously becomes creditor of the company. However, in accordance with the principle of good faith, in such cases the partner should firstly request the money by the company, and if he is not able to get paid, then to claim such amount by the other general partners. In that case the partner is not entitled to claim by the rest partners the full amount paid by him, but only the percentage that the rest partners have in the company in accordance with the agreement they have signed.

**Liability of the limited partner**

The limited partner has the same rights and obligations as the general partner. Thus, limited partner shares the profits and the proceeds arising on liquidation. Moreover the limited partner has the right to participate in the general meeting of the company, where he has the right to vote, to monitor the progress of company’s affairs and to request information. Limited partners are also obliged to contribute to the company’s objectives. In any case, events that occur in the limited partner, such as death, bankruptcy etc may influence the company itself, as they may lead to the dissolution of the company. Moreover, the limited partner reserves the right to terminate the company, as the same right is also reserved by the unlimited partner.

Limited partner’s liability is altered compared with unlimited partner’s liability. Basically, limited partner’s liability is limited. Nevertheless, the limited partner is liable with all his personal assets, but such liability is limited up to the certain amount of his contribution to the company. Therefore, in case that such contribution has already been paid to the company, then the limited partner is no longer liable even against third parties. Limited partner’s liability is direct. Thus, in case that limited partner’s contribution (to the company) has not been paid, the limited partner is responsible for the payment of such contribution not only against the company, but against third parties (creditors) that may claim money by the company. Therefore, in that case a creditor may directly request by the limited partner to get paid for a company’s debt, and if the limited partner pays such money to the creditor, then if such payment reaches the limited partner’s contribution, the limited partner is no longer liable against anyone (the company and rest creditors). Such liability against third parties is also joint (along with the company). Limited partner’s liability is terminated five years after he ceases to be a partner.

As a result of the limited liability of the limited partner, the loss of the limited partner is up to the amount of his contribution to the company. Therefore, if there is no other agreement, the limited partner is not obliged to pay additional contribution in order to cover other company’s losses.

**What is the required form, so as for a general / limited partnership to get established?**

In order to establish a general or a limited partnership, there is a need of a partnership agreement that should be in writing. Such agreement is called Articles of Association
and contains (indicatively) partners’ names, the purpose of the company, company’s name, the place of establishments, the management and the way of termination. The Articles of Association are not required to be in a contractual (notarius) form, unless the law requires so.

**What is the minimum capital required for the establishment of a general / limited partnership?**

There is no minimum capital required by law for the establishment of a general / limited partnership, as the assets of the company are not distinguished by the partner’s assets, as the partners are liable with their personal assets for all the obligations of the company.

**Where should I register a general / limited partnership?**

General and limited partnerships that are established by 04th of April 2011 onwards, are registered to the One Stop Shop.

**Which are the One Stop Shops?**

- One stop shops are the Services of G.C.R. (G.E.Ml. = General Commercial Registrar) that operates at Chambers and the certified KEP centers (Citizen Service Centers).
- In special cases that the Articles of Association are drawn up by a public notary, then the public notary that have drawn up the notarial deed is considered as the one stop shop.

**What is the cost for establishing a general / limited partnership?**

Initially the cost for the Company Establishment Note is fifty (50,00) to seventy (70,00) Euros. Such cost is not refundable. Moreover, in case that the establishing partners are more than three (3), then the cost is increased by five (5,00) Euros per additional partner. Additionally, there is an extra cost:

- The Registration fee in the One Stop Shop is ten (10,00) Euros
- The Chamber registration fee (this depends on the Chamber)
- Contribution to the Lawyers Fund (0,5% of the company’s capital)
- Lawyers Fund fee of Athens. (For capital more than 586,94 Euros is 1% of the capital stated in the Articles of Association plus 3,6% of the above mentioned 1% for the stamp)
- Registration Fee to OAEE (Insurance Organisation for the self-employed [approximately one hundredth ten (110,00) Euros]
- Capital Accumulation Tax (1% of the capital stated in the Articles of Association)
- Annual Fee for having electronic Access in the database of G.E.Ml. (15,00 Euros)

**Where can I find the forms needed to be completed and submitted to one stop shop?**

The forms of declarations and of Tax Capital Accumulation are available on the website of the Ministry of Finance. Other forms may also be found in the website of the General Commercial Registrar (G.E.Ml.)
How does a general / limited partnership is registered in General Commercial Registrar (G.E.M.I.)?

The one stop shop registers online in its database the company’s records and its Articles of Association. In this company a G.E.M.I. number is provided.

Is it possible to transform a general partnership into a limited partnership or vice versa?

Converting a general partnership into a limited partnership and vice versa is always possible with an amendment in the company’s Articles of Association.

How does a general partnership is managed?

The company’s Articles of Association may provide the way that the general partnership is managed. The Articles of Association may set all the partners, some of the partners or even third parties as managers. In case that the Articles of Association do not include the type of management, then the management of the company is exercised by all partners.

How does a limited partnership is managed?

The management of the limited partnership is exercised only by the general partners. The limited partner cannot be included in the management of the company or deal with company’s affairs, either on his own initiative or as a proxy of the other partners, or as a manager. In case that there is a violation of this rule, then this limited partner is jointly liable for all the obligations of the company, with all his personal assets. Therefore, in that case, limited partner’s liability becomes unlimited and that partner will be treated as a general partner (as concerns the liability).

How does a general / limited partnership is terminated?

The termination of a general / limited partnership usually occurs because of the following events:

- The lapse of time for which the company has been established
- Completion of the purpose of the company or failure to complete
- Decision of partners
- Bankruptcy of the company
- Complaint by partner
- Death, declaration of obscurity, bankruptcy, loss of corporate status for one of the partners
- Reduction of the number of partners to one

When does a general / limited partnership enters into liquidation and what happens in the liquidation period?

The general / limited partnership after its termination is entered into the stage of liquidation. During the liquidation stage, the company still exists but only for the purpose of liquidation. The liquidators of the company can no longer be engaged in management acts or to continue company’s commercial activity. Instead, the liquidators are obliged to maintain company’s assets and to make all actions that are necessary for achieving the aim of liquidation.
JOINT VENTURES

What are the basic characteristics of a joint venture?
Under Greek Law joint ventures are not regulated as a particular type of legal entity. Joint ventures constitute an association of two or more persons, in order to complete a common purpose in their joint contribution. The intened purpose of the joint venture (and hence its duration) differs compared with the purpose of other companies in the sense that is not constant but unique and is usually associated directly with a certain project.

Does the term joint venture always include the concept of corporate partnership?
Sometimes the term joint venture covers simple partnerships between companies, that do not include the elements of corporate partnership (consortiums). The same also applies internationally, where the term joint venture, means different kinds of collaborations among businesses. Mostly, such term is used in international collaborations among companies that belong in different states.

Do joint ventures always seek a commercial objective?
The objective pursued by the joint venture may be either commercial or not. If the objective of joint venture is not commercial, then such joint venture would probably be a civil-law company or an unincorporated legal person. If such joint venture has a commercial objective then it should necessarily be regarded as one of the types referred to under Greek Law. Therefore, if the manager of the union operates under the corporate name, then this is a general partnership, which is usually not published and therefore it will be characterized as “de facto” general partnership. If, on the other hand side, the manager operates in his own name and on behalf of the other members, then it will be a silent partnership.

What are the common purposes of a joint venture?
The purposes of a joint venture usually include a) execution of a public or a private project by an association of companies, b) buying a land and its partition in more pieces of land or c) export of goods or services.

What is a joint venture of shipowners?
Joint ventures of shipowners is consisted by people that jointly own ships and exploit them. The ship of each shipowner is considered as his share in the joint venture. Such joint venture has no legal personality. The establishment of this joint venture is not necessary to be in writing. However, is proposed to be in writing in order to have a proof for the terms of the agreement.

What provisions apply to joint ventures?
The provisions that apply to joint ventures depend on the company’s type under which the joint venture operates. Therefore, it may operate under the law that regulates civil-law companies, or the law that regulates general partnerships, or the law that regulates the silent partnerships.
Is it necessary to have specific form in order to establish a joint venture?
The agreement for the establishment of a joint venture is necessary to be in written form. In any case a private agreement is sufficient.

What is the minimum capital required for the establishment of a joint venture? Under Greek Law there is no need to have a capital for the establishment of a joint venture.

When does a joint venture is dissolved? After the completion of the joint venture's objective the joint venture is automatically terminated. Moreover, depending on the type of the company under which the joint venture operates, the joint venture can also be terminated for the same reasons that this type of company under which it operates can get terminated.

Does the joint venture has the right of legal participation? In accordance with the prevailing opinion, the joint venture has the right of legal participation, apart from the cases that the joint venture operates in the form of a silent company.
What is an agency?

Agencies or agents are legal or natural persons, appointed by contract to carry out specific operations as part of the principal’s circle of operations. Agencies can take various forms, and are often used by maritime, travel or insurance companies. An agency can also be a captive third-party owned company performing ancillary functions. The possibility is not excluded for a sales representative or a certified dealer to be used. The difference between agents and branches is that the latter must employ personnel or are regarded as permanent establishments in Greece, while agencies are the principal’s representatives or auxiliary organs in Greece. Provisions on sales representatives were harmonised at European level by Directive 86/653/EC, which was transposed into the Greek law by adoption of presidential decree 219/1991. The provisions on data disclosure for Share Company branches shall also be applicable to agents.

What is a branch?

Albeit widely used in tax law provisions, the term branch has no precise legal definition under Greek law. According to Art. 9 par. 1 of the Code for Books and Records, a branch is “any business installation by a professional where manufacturing or sales activity is performed. Receipt or delivery of goods shall not suffice to establish such activity.” Branches are not endowed with distinct legal personality or the capacity to sue or be sued, acting on behalf and in the name of the principal. Branches must engage in activities in line with the principal’s commercial activity and be relatively independent in terms of operation and administration (premises, personnel, bank accounts). Their establishment must be of permanent character. Consequently, branches are not auxiliary installations (e.g. warehouses, shops). However, restrictions are imposed on the branch’s decision-making powers, so as to keep it under the principal’s legal and financial control.

What steps does a foreign Share Company (A.E.1) need to take in order to set up an agency or branch in Greece?

Prior to setting-up an agency or branch, the foreign-based Share Company must apply for an authorisation with the competent surveillance authority –the territorially responsible Commercial Directorate of the Development Ministry.

As for the incorporation, the foreign Share Company must file:

- Its resolution to set up a Greek branch indicating the purpose, seat, and legal name of the branch.
- A copy of the act which established it and a copy of its Articles of Association.

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1. A.E. stands for “Anonymos Etairia” (Anonymous Company) which is a Share Company. Throughout the article, Share Company is used as a generic term to refer to Companies Limited by Shares, S.A. companies, Corporations and A.E. companies.
A copy of the representative’s or agent’s authorisation, as well as a proxy appointment. If the representative or agent is not an EU citizen, a residence and work permit will be required (exceptions may be included in international or bilateral conventions).

Information concerning the time of its establishment and details (name and surname) of people empowered to act on behalf of and bind the foreign company in its place of seat. In practice, Greek authorities will also need the following:

- A certificate issued by relevant authority of the foreign company’s country of seat, attesting that the company has not been dissolved and its registration has not been revoked,
- An attestation regarding the people empowered to act on behalf of and bind the company in its place of seat.
- An attestation regarding the amount of share capital deposited in the principal’s place of seat which must equal the minimum A.E. capital (this particular requirement when imposed onto EU companies, is considered to be inconsistent with European laws since it runs contrary to the right of free establishment),
- A certificate attesting the foreign company’s registration number, if there is a Register of Companies in its place of seat.
- A bill for collection covering the costs of publication of the authorisation in Government Gazette.

Then, the authorisation and its registration as well as any information regarding the principal and the branch must be published in the Anonymous Company Record and the A.E. / Ε.Ε. Issue of Government Gazette. If the principal is governed by the law of another EU member-state and by Directive 68/151/EC, it is under an obligation to disclose the following:

- Establishing act and Articles of Association,
- Registration number certificate,
- The name of the register in which the file of the company is kept, with indication of the registration number,
- Its name and business form,
- The branch’s postal or other address,
- The object of activity,
- The branch’s name,
- The appointment and proof of identity of the persons who are able to bind the company in relation to a third party and represent it before the court.

For branches of non-EU companies, points 1, 4, 5, 6, 8 above as well as the following must be disclosed:

- The national law of the principal,
- The place of seat and object of activity,
- The amount of subscribed capital.

What steps does a foreign Limited Liability Company (Ε.Ε.2) need to take in order to set up an agency or branch?

A Limited Liability Company will first apply for an authorisation with the Commercial Directorate. The authorisation is then filed with the secretary of the Court of First Instance of

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2. Ε.Ε. stands for “Etairia Periorismenis Efthinis” (Limited Liability Company).
the branch's (or agency) place of seat and is published in Government Gazette. In addition, it is required that:

- The foreign company be incorporated under the legislation enforced in its country of seat and in operation,
- A representative or agent and a proxy in Greece be appointed,
- The reciprocity condition be satisfied.

The authorisation decision is published in the A.E. / E.P.E Issue of Government Gazette.

**Is it compulsory to register with a chamber?**

Yes. Following publication, the opening of operations is notified to the relevant chamber. The right to use the name and the shop name chosen is definitively established. A certificate is issued attesting that the branch was incorporated and that relevant contributions have been paid. The certificate is then filed with the competent tax authority (Δ.Ο.Υ) for the purposes of accounting books verification.

**Tax issues:**

Within 30 days of incorporation, a declaration of opening of operations must be filed with the competent tax authority and all relevant accounting books and records must be verified. No capital is required, only a transaction account between the branch and the foreign-based company. The assets and liabilities, as well as income and expenses of the branch are kept separate from those of the principal.

A branch must pay tax on profits at the effective rate of tax (e.g. today income tax is payable at a rate of 20% on income). A withholding tax is chargeable at a rate of 25% on outgoing profits credited or distributed from the branch to the head offices, despite this running contrary to bilateral conventions on double taxation avoidance. The Ministry for Financial Affairs is expected to clarify this subject. Tax losses in a financial year may be carried forward to be offset against taxable profits incurred in the next five financial years.

The foreign company’s accounting documents (financial statements) as drafted, audited and published under the company’s member-state law, are subject to disclosure formalities. Special laws grant favourable tax treatment to branches of special industries e.g. maritime, consultancy services, advertisement and marketing etc.

Branches keep books and accounting records as the law specifies for each activity. Also, according to the activity undertaken there may be audit requirements (e.g. insurance, investment enterprises).

**Do additional conditions apply for special types of business?**

Special conditions are imposed for undertakings by foreign insurance Share Companies, foreign credit or financial institutions, foreign leasing and factoring enterprises, companies offering investment services and maritime companies (reciprocity condition or disclosure of data on reserves in Greece etc.). Also, the above are subject to additional requirements with regard to support documents and permits (e.g. permit from the Greek Securities Committee, or of the Bank of Greece or of the Minister for Maritime Affairs).

**Liability of representatives**

A representative bears the same (civil and criminal) liability as a member of an A.E. Managing Board, or an E.P.E. manager. The foreign company bears unlimited liability for the branch’s actions. However, a representative may be held liable against the foreign company and possibly against third parties for their actions or omissions which caused damage. Finally, infringement of provisions governing set up and operation of a foreign Share Company’s branch entails criminal penalties against the representative.
What is a subsidiary, according to the Greek law?
Under the Greek law, subsidiaries are endowed with individual legal personality and form a distinct legal entity, while falling under a separate company’s (parent) financial and legal control.

Law No 2190/1920 on Anonymous Companies (A.E.) stipulates that a company shall be given subsidiary status, when the controlling (parent) company:
- holds a majority of capital shares or voting rights at the General Meeting, so as to reserve authority over its decisions. It can also control majority through third parties holding shares on its behalf,
- exercises a majority of the voting rights, pursuant to an agreement with shareholders or members of the company,
- has a holding of less than 50% in the capital and reserves the right to appoint and remove the majority of the managing body members, or
- has the right to exercise a dominant influence or control over it.

Setting up a subsidiary company
In Greece, a subsidiary is usually organised either as a Share Company (A.E.) or as a Limited Liability Company (E.P.E.). Consequently, capital requirements and set up procedures are specified by the appropriate laws concerning each company structure.
In particular, the first step to be taken by a foreign (parent) Share company wanting to set up a subsidiary in Greece is to appoint an official representative in Greece with the relevant tax office (Δ.Ο.Υ).

Who shall be empowered to manage and represent the subsidiary company and with what liabilities?
The type of the managing body used and liabilities of the same will depend on the legal form of the subsidiary. In A.E. structures, management operations and representation are in the hands of a Managing Board, while in E.P.E. structures, the above are the responsibility of a manager appointed by the Articles of Association.

Decision-making bodies
Again, the type of body responsible for making important decisions concerning the subsidiary will depend upon the legal structure chosen. Where the subsidiary is an A.E., decisions will be made by the General Meeting of Shareholders, which has ordinary meetings at least once a year, within six months after closure of each financial year.
Where, on the other hand, the subsidiary is a Limited Liability Company (E.P.E), decisions are made by the Meeting of Members, which has mandatory ordinary meetings at least once a year, within three months after closure of each financial year.

What is the liability of the parent company for its subsidiary’s actions in relation to third parties?
Since a subsidiary has individual legal personality, distinct from its parent, the former usually assumes all liability for its own actions affecting third parties. However, in certain cases, parent companies circumvent the law on legal personality and control the subsidiary to such an extent that it no longer constitutes a separate legal personality. Should this be established, the parent company shall also be held liable against the affected third parties.

How are the subsidiary’s net profits distributed?
Net profit distribution methods are stipulated by the laws governing each business structure (A.E or E.P.E).
The case of subsidiaries organised as E.P.E is of particular interest: after deduction of capital reserves as well as all expenses and losses, members are entitled to net profits according to their participation in the company’s capital. However, the Articles of Association may provide otherwise granting privileges to a particular member, in this case to the parent company.

Winding up a subsidiary company

Liquidation methods will depend on the subsidiary’s legal structure, and are laid down in law 2190/1920 for A.E. companies and in law 5190/1955 for E.P.E companies. If the parent company is liquidated, then the subsidiary’s continuation depends upon the parent’s decision and on how its interests are best served. The parent may decide to wind up the subsidiary or sell its shares etc. However, in case of a merger between the parent and another company, the subsidiary’s legal entity will not be affected; only the share book (for A.E. companies) or the Articles of Association (for E.P.E. companies) will be amended.

Accounting books and records and audit requirements concerning a subsidiary company

Subsidiaries must keep accounting books and records, and are subject to audit requirements in the exact same way as any domestic A.E. or E.P.E company. With regard to closure of the business year, an exception is granted in case the subsidiary is an A.E. and the parent holds at least 50% of its capital, allowing the subsidiary to close business year on the same date as the parent.

Tax issues for subsidiary companies

In principle, all Greek companies pay tax on profits prior to distribution at 20%. Withholding tax is chargeable at a rate of 25% on outgoing dividends after taxation, if distributed after year 2011. However, if the parent is governed by the European Union Parent-Subsidiary Directive, which has been incorporated in the Greek law on EU companies with participation of at least 10% in a domestic company’s capital, the subsidiary may be exempt from the 25% withholding tax under special conditions stipulated in this Directive. In case the parent company is not governed by the aforementioned Directive, but its country of seat has signed a double taxation avoidance treaty with Greece according to the OECD model, then the convention’s provisions shall be applicable, unless more favourable provisions are applicable under domestic legislation. Lastly, subsidiaries may, subject to conditions, deduct 5% of the parent’s expenses from their net profit, so long as the total does not exceed the sum of 100,000 euros per year. Any additional issues are regulated by the laws regarding share and limited liability company taxation, also applicable to subsidiary companies.

Subsidiary versus branch

Whereas subsidiary set up incurs higher costs since it requires payment of capital, it is a quicker than establishing a branch, which requires an authorisation by the Minister for Development. As to tax, a branch can potentially deduct all of the parent’s expenses from its income (a subsidiary can only deduct 5%). However, subsidiaries may be exempt from withholding tax payable at 25%, or other percentage according to the double taxation avoidance treaty, on distributed earnings. The latter is particularly interesting for large companies.

What is a representative office?

Foreign companies may choose to simply set up a representative office, which has no independent activities. It ensures promotion of the principal’s interests in a given seat through advertising, researching the local market, informing interested parties and bringing them into
contact with the principal. It is common for banks and broker companies to use this form of representation.
A representative office constitutes a more limited representation structure than a branch. It is an intermediary between individual business transactions and the setting up of a branch.

How is a representative office incorporated?
Representative offices are incorporated under special permit, by decision of the Financial Affairs Minister which is published in Government Gazette, within 50 days after the filing of relevant application by the foreign company.
Within 12 months following the decision of the Financial Affairs Minister, the office must employ at least 4 individuals and the principal must incur annual running costs in Greece of at least 100,000 euros.

Tax issues, accounting books and records, audit requirements of a representative office
The office's gross income must be collected through bank transfers and is calculated following a cost-plus method, that is, by adding a fixed rate of profit on all expenses and depreciations excluding income tax. The applicable in each company profit, which may not be lower than 5% of the expenditure, is set by the decision of the Financial Affairs Minister who approves of the office's establishment, according to legal criteria and after audits by the relevant Committee. Representative offices do not have to keep double account books, only the receipts and expenses journal, and are not subject to audits or financial data disclosure. More particularly, foreign maritime companies wanting to establish a representative office or branch in Greece shall enjoy tax exemptions as provided for by law.
Greece provided a reasonably hospitable climate for foreign investment through the use of offshore companies in past. Presently new tax legislation has limited the use and renders such an investment not profitable. In this respect professional advice should be sought in order to appraise the investment opportunity and choose the appropriate investment scheme.

A. FOREIGN CORPORATIONS

1. Establishment by a foreign corporation of a branch office in Greece

Foreign Corporations may establish a branch in Greece. There is no distinction on whether the country of origin is a low or high tax jurisdiction. An application is filed at the Department of Commerce of the local Prefecture. Documents that must be submitted are:

- Articles of incorporation;
- Corporate resolution for the establishment of the branch of the company in Greece;
- Power of attorney to the person who is appointed director of the Branch in Greece;
- Certificate of Incorporation in the country of origin;
- Certificate of good standing from the country of origin;
- Certificate of fully paid-up capital (minimum amount of fully paid up capital 60,000 Euros for S.A. and 18,000 for limited liability Companies, or the equivalent in any other currency) issued by a public authority in the Country of origin (this rule does not apply to companies from an EU country).

This kind of branch is liable to the corporate tax rate and has all tax deductions and obligations as normal Greek Société Anonyme.

It is advised that foreign companies under the Société Anonyme status are preferred, as they need no other special authorization.

Once the approval has been obtained, the registration is then published in the Government Gazette.

2. Participation of a foreign corporation in Greek corporation

It has been widely used in the recent years, that corporations mainly from zero or low tax jurisdictions hold some interest on Greek corporations.

- Participation on Greek Société Anonymes
  The participation of the foreign legal entity has no implications provided it is the Equivalent of a Greek S.A.
- Participation on Greek Limited Liability Companies
  Regardless of its type the foreign legal entity shall have a permanent establishment in Greece.

3. Ownership of real property

Greeks and foreigners, often proceed to the acquisition of real estate in Greece through a foreign corporation. Panama and Liberian companies have been most commonly used, however certain tax structures had been elaborated in order to avoid future possible tax implications.

Currently a 15% Annual Special Real Estate Tax is levied on tax value of the real property owned by non EU companies.

Amongst other exemptions an exemption is available to ship-owning companies and shipping companies with Law 89/67 Offices in Greece (vide next chapter) with respect to self-used
property and property leased to other shipping companies used exclusively as offices or warehouses for business purposes.

- Deemed income of the corporation

Unless the real property is rented, the fact that its use is granted for free to a physical person or any other legal entity generates a deemed income that we will taxable at the applicable tax rate

B. OTHER VEHICLES FACILITATING OFFSHORE TRANSACTIONS

1. Ownership of Real Property in “Frontier Areas”

Pursuant to the Royal Decrees of 1927, 1928 and 1932, aliens were not allowed to conclude juridical acts in the frontier areas. Nevertheless, law 1892/1990 introduced some modifications and now determines the conditions for conclusion of juridical acts in such areas. According to the provisions of this law, any inter vivos juridical act which constitutes real rights or contractual claims in favour of natural or legal persons on the frontier areas is prohibited. Furthermore, the assignment of shares or parts of any type of company, which owns real estate in this area, as well as any change in partners of such companies, is prohibited. Legal and natural persons with Greek nationality, ethnic Greeks, including Cypriots, as well as EU nationals, may apply for an exemption. A special committee, which is composed of the Prefect and representatives of the Ministry of Defence, the Ministry of Economy, the Ministry of Public Order, and the Ministry of Agriculture is competent to grant such an exemption. Legal or natural persons originating from third countries can also, upon request, obtain the above-mentioned rights after decision of the Ministry of Defence that is scarcely the case.

In this respect, the suggested vehicles are either Greek companies with EU incorporated legal entities, as their holding companies, or EU incorporated companies. “Frontier areas” are considered to be: (a) the districts of Samos, Chios, the Dodecanese, Evros, Florina, Kastoria, Kilkis, Lesbos, Rodopi, Thessprotia and Xanthi; (b) the province of Nevrokopi of the district of Drama, the provinces of Konitsa and Pogonio of the district of Ioannina, the provinces of Almopia and Edessa of the district of Pella; and the province of Sintiki of the district of Serres and (c) the islands Santorini and Skyros, including such islets as fall with their administrative jurisdiction.

C. BUSINESS STRUCTURES ENJOYING LOW TAX JURISDICTION PRIVILEGES

1. Establishment in Greece of foreign commercial and industrial companies under law 89/67

(as initially applied, the current legal framework under law 3427/05 is described in par 3)

Foreign Commercial and Industrial Companies of any type or form legally operating in the country of their registration and dealing exclusively with commercial business whose object lies outside Greece, may be established in Greece following special permit granted by the Minister of Coordination. An application is submitted to the Private Investment Division and should mention:

a. the company’s Nationality;
b. the form under which the Company is operating in the country of its registration;
c. the form under which it will operate in Greece (branch office, agency, or office of the parent company);
d. the Company’s object;
e. the name of the person who will be in charge in Greece;
f. deposit of a bank guarantee from a Greek or a foreign bank of acknowledged standing which will be forfeited in favour of the Greek State in case of breach of the provisions of Law 89/67 by the company’s personnel.

The application has to be submitted and signed by a Greek Attorney at Law. In case that the person in charge of the Company’s office in Greece is not a Greek National, a Greek Attorney at Law should be appointed as such in order to receive all official correspondence.
Foreign and Industrial Companies which have obtained an establishment permit shall, without any formality, be entitled to the following facilities concerning residence permits, custom duties, taxation and other matters, provided they are exclusively engaged in commercial activities whose objects lie outside Greece:

a. permission of employment and residence in Greece for the foreign personnel (the permits are without any formality issued for the period of two years and are renewable for the same period upon declaration from the Company that the persons in question are still employees of the company’s branch);
b. tax clearance certificates valid for one year, may be issued to the aforesaid personnel;
c. total exemption of the Company from:
   - custom duties
   - import taxes
   - stamp duties
   - contributions
   - turnover tax
   - luxury tax
   and any other taxes, duties or charges in favour of the State;
d. total exemption from taxes, duties, or charges for any article necessary for equipping their office in Greece;
e. exemption from income tax, as well as other tax, charge or contribution in favor of the State or any other third party for all persons of foreign nationality employed by the company, provided they hold a duly issued valid permit for employment and residence in Greece;
f. import and keep free of duty a car for the foreign personnel (every alien employee has the right to one duty free car, which will be provided with standard Greek plates);
g. import free of duty of the household equipment for the foreign personnel;
h. import and export without any formality of samples and advertising material of no commercial value.

The branches or offices shall enjoy the above mentioned facilities and immunities, provided that they cover, by importing foreign exchange not necessarily assignable, their operation expenses in Greece by the equivalent of at least $USD 50,000 and that all payments made in Greece should be made on their account or on the account of their parties.

2. Foreign shipping companies establishing an office or a branch in Greece under the provisions of Law 27/75

Branches or offices of foreign companies dealing exclusively with the management, exploitation, chartering, insurance, average adjustments, brokerage of sale, shipbuilding, chartering or insurance of ships under Greek or foreign flag may be exempted from income taxation, despite having a permanent establishment in Greece, in exchange for their obligation to import foreign currency to finance their local operation (minimum of funds imported and spent on office expenses in Greece USD50,000,00)

They enjoy the same facilities and immunities as the branches or offices established under the provisions of Law 89/67, except from the following:
- the import and keep free of duty of the car;
- the amount of the bank guarantee is $USD 10,000;
- the fee of $USD 2,000 is paid to the Greek Government upon the grant of the permit of establishment;

The amount of $USD 50,000 that should be spent in Greece justifies the presence of 4 aliens (i.e. four principal residence permits). If a fifth alien should be added as an employee of the office $USD 12,000 more should be imported and spent (i.e. for every additional employee the sum of $USD 12,000 should be added)
Establishment in Greece of foreign commercial and industrial companies according to LAW 89/67 as amended by Law 3427/05 and in force today.

Foreign companies may be established in Greece according to the provisions of Law 3427/05, aiming exclusively at the provision of the following services to their head-offices or affiliates abroad (within the meaning of Article 42e of Law 2190/1920):

- Consulting services
- Centralised accounting services
- Quality control of production, products, procedures and services
- Preparation of studies, designs and contracts
- Advertising and marketing services
- Data processing services
- Receipt and supply of Information and Research & Development services.

Established companies under this regime, are obliged a) to employ a staff of at least 4 employees in Greece and b) to have at least 100,000 Euro per year operating expenses in Greece.

Tax incentives for companies established under this regime:

The gross income from services provided (only collected by bank remittances) is calculated according to the cost-plus method. Profit margins (amounting to not less than 5%) are set separately for each company, in application of competent regulatory authority criteria (Committee of Ministry of Economy), mainly consisting in the nature of services provided, the area of business activity and the OECD Guidelines on intragroup charges.

The taxable income of the company is determined after all expenses on considered profit margin are deducted from the gross income, on the condition that they are supported by fiscal documents in compliance with the provisions of the Accounting Books and Records Code.
MUTUAL FUNDS

What is a “mutual fund”?
A mutual fund (“MF”) is a pool of assets, consisting of transferrable securities, money market instruments and cash, whose assets are divided into “units” owned by more than one unit holder. Each unit’s value is the sum of the MF’s assets divided by the total number of units.

Which are the MF’s key persons/entities?
(a) The unit holders which subscribe to the MF, acquiring units which represent the fraction of each unit holder’s share in the MF’s assets; (b) the management company which manages and represents the MF; and (c) the depositary, to which the MF’s assets are entrusted.

Is a MF a separate legal entity?
A MF is not a legal person bearing a separate legal personality. Its unit holders are represented in transactions or in front of Courts and authorities by its management company.

What are the establishment requirements?
A MF is established pursuant to an authorization granted by the Hellenic Capital Market Commission (“HCMC”) to the management company. The management company submits for approval to HCMC: (a) an analytical list of the MF’s assets (minimum € 1,200,000); (b) a declaration by a credit institution operating in Greece that it accepts the depositary’s duties and the consequent entrusting of the MF’s assets; (c) the MF’s regulation. HCMC grants the above authorization provided that it approves the compliance of the management company’s, depositary’s and MF’s regulation’s requirements with the law.

Who manages the MF?
The MF’s management is performed solely by the management company. However, unit holders representing at least 10% of the mutual fund’s assets may request to the management company to convene a unit holders meeting in order to provide therein any requested information on the MF’s management. In addition, in case the value of the MF’s assets falls below 40% of the average value of such assets during the last four calendar quarters, then HCMC may convene a unit holders meeting in order to decide the MF’s dissolution.

Are there any liability issues?
Both the management company and the depositary are liable towards the unit holders for negligence. In addition, there are several administrative and penal consequences for the management company, depositary (and officers, employees or representatives thereof) in cases of infringement of the applicable legislation or of any HCMC’s decision. Unit holders
do not bear any liability for actions or omissions of the management company or the depositary.

**How are units acquired by the unit holders?**

Units are acquired by the unit holder pursuant to a written application form and acceptance of the MF’s regulation on a price calculated on the unit’s value on the application day.

**What about reporting requirements?**

The management company prepares an annual report in relation to each financial year which includes a detailed statement of assets, balance sheet, distributed and reinvested profits, income and expenditure account, units and unit prices, including also a comparative study of the three last financial years, as well as, any other important information required. The management company prepares also a less detailed report on a semi-annual basis. The above mentioned reports are audited by auditors, are submitted to HCMC and are supplied to any unit holder on request. At the end of each financial year, a brief statement of the MF’s assets, balance sheet and distribution of profits are being published to an Athens newspaper. In addition, the management company prepares a simplified and a full prospectus which are updated on a periodical basis. Finally, the MF’s assets, number of units, as well as, each unit’s value, acquisition and redemption price are calculated and published to the press on a daily basis.

**Are there any restrictions on the investments?**

The MF’s investments consist solely of: (a) transferrable securities and money market instruments admitted or dealt in a regulated market; (b) transferrable securities and money market instruments dealt in on a regulated market of a EU Member State which operates regularly and is recognized and open to the public; (c) transferrable securities and money market instruments admitted to official listing on a stock exchange or regulated market of a non EU Member State which operates regularly and is recognized and open to the public (as per HCMC’s list); (d) recently issued transferrable securities, pursuant a HCMC authorization; (e) Units issued by Undertakings for Collective Investment in Transferrable Securities as authorized pursuant to the applicable legislation; (f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn and maturing in no more than 12 months (under certain conditions relating to the credit institution); (g) financial derivative instruments, including cash-settled instruments; (h) money market instruments, other than those dealt in a regulated market (under certain conditions).

**Are there any restrictions on the investment policy?**

There are several investment policy restrictions provided by the applicable legislation, mainly for risk exposure reasons.

**How are proceeds being distributed?**

Proceeds from interests, dividends or profits may be distributed annually to the unit holders, following the deduction of the financial year’s costs. Profit deriving from asset sales is distributed to the unit holders to the extent that it is not exceeded by loss for the same period.

**How are units redeemed by the MF?**

Units are redeemed upon the request of a unit holder on a price calculated on the unit’s value upon the request day.
What happens on liquidation?
The MF’s assets are distributed by the management company under the depositary’s control. Upon completion of the distribution procedure, a report (signed also by an auditor) is prepared and submitted to HCMC and is supplied to any unit holder on request.

Are there any tax benefits?
The MF’s Act of Incorporation, as well as, any offer or redemption of its units are free of any tax, duty, stamp duty or any other taxation measure. Any MF’s income from transferable securities is exempted from income and withholding tax (there are certain conditions relating to income deriving from bond loan interest).

PORTFOLIO INVESTMENT COMPANIES

What is a “portfolio investment company”?
A portfolio investment company (“PIC”) is a company in the form of a joint stock company having as exclusive scope the portfolio management.

Is a PIC a separate legal entity?
Being a joint stock company, the PIC is a separate legal entity bearing a legal personality and is also governed by the legislation relating to joint stock companies.

What are the establishment requirements?
The PIC is established pursuant to an authorization granted by HCMC. The minimum (fully paid up) share capital requirement is € 500,000 and the PIC’s shares must be registered. Furthermore a declaration of a credit institution operating in Greece that it accepts the depositary’s duties and the consequent entrusting of the PIC’s assets is required. HCMC grants the above authorization evaluating: (a) the PIC’s organization structure, technical and financial means; (b) the management team’s reliability, experience, professional skills and reputation; and (c) the suitability of shareholders holding more than 10% or having significant influence on the management.

Who manages the PIC?
The PIC is managed by its Board of Directors whose members must comply with the requirement posed by the applicable legislation in terms of professional experience and integrity. The PIC’s shareholders have the powers foreseen by the legislation relating to joint stock companies.

What are the depositary’s duties?
The depositary is entrusted with the assets that consist the PIC’s portfolio, co-signs the investments lists and certifies that all shares transactions (sale, issue, re-purchase etc), as well as, the shares valuation are performed in accordance with the applicable legislation. The depositary may entrust its duties to another credit institution (which is subject to the same supervision rules) with the consent of the PIC, being jointly liable with such.

Are there any liability issues?
There are several administrative consequences for the Board of Directors and the depositary (and officers, employees or representatives thereof) in cases of infringement of the applicable legislation or of any HCMC’s decision. Shareholders do not bear any liability for actions or omissions of the Board of Directors or the depositary.
How are PIC’s shares acquired?

The PIC’s shares are listed in a regulated market operating in Greece within 6 months from its operating authorization (pursuant to a minimum € 10,000,000 share capital increase effected through public offering) and are traded thereafter.

What happens if the company’s shares are not listed pursuant to the previous paragraph?

HCMC revokes the PIC’s operating authorization.

What about reporting requirements?

The PIC makes available to the public an investment list every three months. In addition, the PIC’s corporate bodies decide on the annual balance sheet and keep its accounting books in accordance with the legislation relating to joint stock companies.

Are there any restrictions on the company’s investments?

Yes, there are similar investment restrictions to the ones referred in the Mutual Funds paragraph above.

Are there any restrictions on the investment policy?

There are several investment policy restrictions provided by the applicable legislation, mainly for risk exposure reasons.

How are dividends being distributed?

Dividends are distributed in accordance with the legislation relating to joint stock companies.

What happens on liquidation?

As a general rule, the company is liquidated and its assets are distributed pursuant to the applicable provisions of the legislation relating to joint stock companies. However, in cases of the company’s dissolution for any reason other than bankruptcy, the HMCM may decide to invoke a special liquidation procedure whereby it appoints a liquidation supervisor who supervises the ordinary liquidator.

Are there any tax benefits?

The company’s Act of Incorporation, as well as, any shares issued are free of any tax, duty, stamp duty, with the exception of capital duty taxes, VAT and duties in favour of HCMC. Income from transferable securities is exempted from income and withholding tax (there are certain conditions from income deriving from bond loan interest). Moreover, PICs pay a semi annual tax on the six month average of their investments calculated on 10% of a sum equal to the applicable ECB interest rate plus 1%. Any withholding tax on dividends, as well as, capital gain tax regarding the sale of shares, is set-off with any tax declared by the PIC and represents the only tax to be paid by the PIC and its shareholders.

VENTURE CAPITAL

How do venture capital firms operate in Greece?

As a general practice venture capital firms invest in Greece through companies established in foreign - tax friendly - jurisdictions and proceed to their investments through the acquisition and consequent sale (de-investment) of securities issued by Greek companies. That being said, the Greek legislation provides for the establishment in Greece of a venture capital either in a form of a joint stock company or a mutual fund. The following questions/
answers relate to venture capital firms in the form of a mutual funds, since this is the most broadly used investment vehicle foreseen by the Greek legislation.

**What is a venture capital mutual fund (“VCMF”)?**
A VCMF is a pool of assets, consisting of transferrable securities and cash, whose assets are divided into “units” owned by more than one unit holders. The value of each unit is the sum of the VCMF’s assets divided by the total number of units.

**Which are the VCMF’s key persons/entities?**
(a) The unit holders which subscribe to the fund, acquiring units which represent the fraction of each unit holder’s share in the VCMF’s assets; (b) the management company which manages and represents the VCMF; and (c) the depositary, to which the VCMF’s assets are entrusted.

**Is a VCMF a separate legal entity?**
A VCMF is not a legal person bearing a separate legal personality. Its unit holders are represented in transactions or in front of Courts and authorities by its management company.

**Are there any duration/place restrictions?**
The VCMF’s headquarters must be in Greece. Its duration may not exceed 15 years.

**Is a VCMF supervised by the HCMC?**
No.

**What are the requirements for the establishment of a VCMF?**
A VCMF is established pursuant to an Incorporation and Management Agreement concluded between the management company, the depositary and the unit holders. There are minimum requirements in relation to the VCMF’s and each unit holder’s assets (€ 3,000,000 and € 150,000 respectively). A copy of the Incorporation and Management Agreement is submitted to the competent fiscal authority.

**Who manages the VCMF?**
A VCMF’s management is performed solely by the management company. However, in cases of ambiguity as for way of management, unit holders representing at least 33% of the VCMF’s assets may, under certain conditions, request to the competent Court to order appropriate measures for the VCMF’s management.

**Are there any liability issues?**
There are penal consequences for the management company and the depositary in cases of infringement of certain provisions of the applicable legislation. Unit holders do not bear any liability for actions or omissions of the management company or the depositary.

**How are units acquired by the unit holders?**
Units are acquired by the unit holder either through the conclusion of the Incorporation and Management Agreement or through a subsequent acquisition. However the Incorporation and Management Agreement may contain restrictions on the transfer or encumbrance of units.

**What about reporting requirements?**
The management company prepares an annual report in relation to each financial year which includes a detailed statement of assets, balance sheet, distributed and reinvested...
profits, income and expenditure account, units and unit prices, as well as, unit holders changes. The management company prepares also a less detailed report on a semi-annual basis. The above mentioned reports are supplied to any unit holder on request.

Are there any restrictions on the investments?
As a general rule, VCMF acquires solely non listed securities or bonds issued by capital companies with headquarters in Greece

Are there any restrictions on the investment policy?
There are several investment policy restrictions provided by the applicable legislation, for risk exposure and transparency reasons.

How are proceeds being distributed?
Proceeds from interests, dividends or profits may be distributed annually to the unit holders, following the deduction of the financial year’s costs pursuant to the provisions of the Incorporation and Management Agreement.

What happens on liquidation?
In case of a VCMF’s liquidation, its assets are distributed by a liquidator pursuant to the respective provisions of the Incorporation and Management Agreement, as well as, the Civil Code.

Are there any tax benefits?
The VCMF’s Act of Incorporation, as well as, any subscription by the unit holders are free of any tax, duty, stamp duty or any other taxation measure. The VCMF is not a tax payer and any unit holders’ income deriving from the VCMF is taxed on each unit holder separately.
What is a banking enterprise?
The credit institutions and the financial institutions are the two categories of banking enterprises eligible to be established and to operate in Greece. The Bank of Greece is the competent national authority that supervises and monitors the establishment and the operation of both the credit and financial institutions pursuant to the applicable Greek and European Union legislation.

What is a Credit Institution?
A Credit institution is an enterprise entitled to receive deposits or other repayable funds from the public and to grant loans or other kind of credit on its own account. Natural or legal entities which are not credit institutions are prohibited by Law to carry out the business of receiving deposits or other repayable funds from the public, while carrying out the business of granting loans or other kinds of credit to the public is subject to special authorization by the Bank of Greece.

Which are the business activities of credit institutions?
The list of activities of credit institutions are the following:
- receipt of deposits of other repayable funds;
- lending or granting of other credit, including factoring transactions;
- financial leasing;
- payment services;
- issuance and management of other means of payment, such as travel of bank checks;
- guarantees and undertaking of commitments;
- trading for its own account of for the account of customers in money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments or transferrable securities;
- participation in securities issuance and the provision of related services, including in particular underwriting;
- advisory services to undertakings on capital structure, industrial strategy and related issues and provision of services relating to mergers and acquisitions;
- money broking;
- portfolio management and advice;
- safekeeping and administration of securities;
- credit reference services, including customers’ credit rating;
- safe custody services;
- issuance of electronic money; and
- activities other than the above named, provided for in paragraphs 1 and 2 of Article 2 of Law 2396/1996 (Greek Government Gazette 73A), as currently in force.
What is a Financial Institution?
A financial institution is an enterprise other than a credit institution having as principal business activity the acquisition of holdings or the performance of one or more of the business activities provided by Law, i.e. the above named business activities of credit institutions except for the ones under clauses (a), (m), (n) and (p).

Which type of entities may be a credit institution?
The credit institutions may only be established and operate in the form of a société anonyme company or in the form of a credit cooperative pursuant to the provisions of Law 1667/1986 (Greek Government Gazette 196A) as currently in force. The credit institution may commence the operation of its activities following the obtainment of the requisite authorization by the Bank of Greece. Greek société anonyme companies are governed by the Greek Company Law 2190/1920, as currently in force. The credit institutions established and operating in Greece are obligated to have their real central management in Greece.

Are branch offices permitted to perform the business activities of credit institutions?
Credit institutions authorized in Greece
Any credit institution authorized in Greece may carry out the business activities permitted by the applicable Greek legislation for credit institutions in any member state of the European Union (EU) or the European Economic Area (EEA) (herein after the “Member State”), through a branch, provided that such activities are covered by its authorization and the credit institution wishing to establish a branch abides by the procedure provided by Law, including, among others, the requisite notification to the Bank of Greece.
The Bank of Greece is the competent authority to decide upon and authorize credit institutions which are authorized in Greece in order to establish branches in any Member State, in Greece, and in third countries.

Credit institutions authorized in Member States
Any credit institution authorized in a Member State, other than Greece, may carry out the business activities of credit institutions through a branch in Greece, provided that the activities of such branch are covered by the credit institution’s authorization in the home Member State and that the competent authorities of such home Member State communicate to the Bank of Greece all of the information required under the applicable Greek legislation, as well as all detailed information on the deposit guarantee scheme as in force pursuant to the applicable legislation in the home Member State. All places of business operating in Greece are treated as one single branch. The Bank of Greece is the competent authority to set the procedures for the supervision of the branch, and, if deemed necessary, the conditions under which such branch may operate in Greece, as well as to proceed to the requisite notifications in order for the credit institution to establish its branch and commence the operation of its business activities.

Credit institutions authorized in third countries
The Bank of Greece may grant authorization for the establishment and operation in Greece of branches of credit institutions authorized in any third country, based on the principle of reciprocity, without prejudice to the agreements concluded by the European Union and provided that certain terms and conditions provided by Law are met.

Are branch offices permitted to perform the business activities of financial institutions?
Any financial institution authorized in any Member State, other than Greece, which is a subsidiary company of one or more credit institutions, may carry out in Greece any of the business activities provided by the applicable legislation for the financial institutions, either
by establishing a branch in Greece or by providing services, under the condition that its Memorandum or Articles of Association allow the pursuit of such activities and certain terms and conditions provided by the applicable legislation are met. Financial institutions which are authorized in Greece and supervised by the Bank of Greece may pursue their activities in another Member State either by establishing a branch or by providing services, under the condition that the procedures, and the terms and conditions provided by the applicable legislation, are met. Financial institutions authorized in a third country may provide in Greece specific [limited] financial services through the establishment of a branch or without an establishment in Greece following authorization by the Bank of Greece, provided that the procedures, and the terms and conditions provided by the applicable legislation, are met.

What are the minimum capital requirements for the establishment of credit institutions?
The minimum paid-up initial capital required in order for the Bank of Greece to grant the prerequisite authorization for the commencement of activities to:

- a credit institution is eighteen million Euros (€18,000,000.00);
- a branch of a credit institution authorized in a third country is nine million Euros (€9,000,000.00); and
- a credit cooperative as a credit institution is six million Euros (€6,000,000.00).
The foregoing thresholds may be adjusted by relevant decision of the Bank of Greece to amounts of minimum five million Euros (€5,000,000.00).

The initial capital of credit institutions must be paid up in cash?
If the initial capital is not fully paid up in cash, the Bank of Greece shall decide, on an ad hoc basis, which other assets, and to what proportion, may be contributed in kind, instead of cash, taking into account the liquidity and the solvency standards applying to credit institutions. More specifically, in the event that an already operating legal entity is to be converted into a credit institution, at least 80% of the assets of such legal entity must be paid up entirely in cash, deposits, securities traded in regulated markets and short-term loans or other credit which has been granted on the basis of banking criteria.

Are there any minimum equity requirements?
The equity of the credit institutions may not fall below the amount of the minimum initial paid up capital required pursuant to the provisions of the applicable legislation, as in force from time to time. The Bank of Greece determines the time period within which the credit institutions are obligated to adjust their equity to the minimum initial capital required by Law from time to time or to restore their equity in the event that it has fallen below the amount of the minimum initial capital required by Law from time to time.

What actions must be taken in order to obtain the requisite authorization by the Bank of Greece?
The interested parties must:

- submit an application for authorization by the Bank of Greece and, before such authorization is granted, they must pay up the initial capital;
- Notify to the Bank of Greece the identities of:
  i) the shareholders, natural or legal entities, holding, directly or indirectly, 5% or more of the share capital or voting rights of the credit institution, and their share holding;
  ii) the ten majority shareholders of the credit institution and their respective share holdings or voting rights;
iii) any natural entities, other than the ones referred to in (i) and (ii) hereinabove, who exercise control over the credit institution, by virtue of written agreements or other arrangements or through common action;
iv) the persons who shall be responsible for determining the orientation of the business activities of the credit institution and shall participate in its Board of Directors. The appointment of at least two (2) persons assigned with such duties is a condition precedent for the obtainment of the authorization by the Bank of Greece and the continuation of operation of the credit institution;
v) the other members of the Board of Directors; and
vi) the persons in charge for the operation of the credit institution pursuant to the provisions of the applicable decisions of the Bank of Greece concerning the internal audit systems.

- Submit to the Bank of Greece an operational business plan setting out in particular the types and the scope of the business activities envisaged, the business plan, the structure of its parent group, if applicable, as well as the credit institution’s structural organization, the internal control system including its Internal Audit, Risk Management and Compliance functions, and the procedures required for compliance with the applicable legislation concerning corporate governance rules.

Is there any other information or action required for the obtainment of the authorization or during the operation of the credit institution?

Prior to the grating of the requisite authorization, as well as at any time during the operation of the credit institution, the Bank of Greece may additionally request the following:

- details on the identity, the financial status and the source of funds of:
  i) the natural or legal entities, holding, directly or indirectly, more than 1% of the share capital or voting rights of the credit institution;
  ii) the natural entities that exercise control over the credit institution, by virtue of written agreements or other arrangements or through common action; or control directly or indirectly, the legal entities which are shareholders of the credit institution holding, directly or indirectly, 5% or more of the share capital or voting rights; or control the legal entities which are the ten majority shareholders of the credit institution;
  iii) the natural entities who are responsible for determining the orientation of the business activities of the credit institution, members of its Board of Directors and in charge for internal audit systems;
- that the voting shares of the legal entities referred to herein above under clause (a) are registered voting shares;
- that certain percentages of the total voting shareholding referred to hereinabove are held by one or more natural entities who have obtained the prior approval by the Bank of Greece;
- that the credit institutions provide to the Bank of Greece all appropriate information in order to enable the Bank of Greece to confirm that the authorization requirements according to the provisions of the applicable legislation are met at all times or that no situation that may constitute ground for non granting the authorization has arisen.

For the achievement of the foregoing objectives the Bank of Greece may also:

- determine the requisite supporting documentation, the particulars and other details;
- set further restrictions and requirements concerning the activities or the tasks entrusted to the natural entities referred to in the foregoing clause (a) hereinabove in order to prevent or eliminate significant conflicts of interests or influence that could be detrimental to the prudent and sound management of the credit institution;
- impose specific restrictions and conditions for the operations of the credit institution;
- set the criteria for determining whether any natural or legal entities maintain, directly or indirectly, close links with the credit institution;
- by way of derogation from the general provisions applying on sociétés anonymes companies, set the procedures, the maximum deadlines and any other terms and conditions regarding the credit institutions’ loans of any type, other credit, guarantees, as well as holdings in the legal entities referred to in clause (d) hereinabove, in order to ensure that such transactions are not carried out under preferential terms compared with those generally applied by the credit institution or in a manner that may be detrimental to the prudent and sound management of the credit institution; and
- the obligation to apply for the listing of the shares of the credit institution on a regulated market in order to ensure larger allocation of shares, within a period of time not exceeding five (5) years or the minimum period of time required by the applicable legislation following the lapse of which an application for listing may be filed.

**The Bank of Greece may not grant the prerequisite authorization**

The Bank of Greece shall not grant the authorization to a credit institution in the event that it deems that:
- the foregoing natural or legal entities, which are shareholders, members of the Board of Directors and in general responsible for the management of the credit institution are not reliable or capable to ensure the prudent and sound management of the credit institution or capable to prevent or eliminate significant conflicts of interest or influence that may prove detrimental to same;
- more specifically the natural or legal entities responsible for the management of the credit institution and the Board of Directors as a whole lack the necessary experience and expertise for the efficient performance of their duties;
- there are doubts as to the origin, the true ownership, or the adequacy of the funds of the above named shareholders and the natural entities that control, directly or indirectly, the legal entities which are shareholders of the credit institution;
- the structure of the group of the credit institution’s affiliate companies is not sufficiently transparent enabling the Bank of Greece to exercise of its supervisory duties;
- any of the requirements provided by Law are not met;
- the laws, regulations or administrative provisions of a third country governing one or more natural or legal entities with which the credit institution has close links prevent the effective exercise of the supervisory duties of the Bank of Greece.

In any case the Bank of Greece shall grant or deny the authorization within six (6) months from the receipt of the application or, in the event that such application is incomplete, within six (6) months from the receipt of the requested information. The Bank of Greece shall issue its decision in any case within one (1) year from the receipt of the application. The denial of the authorization must be justified and notified to the applicant. If the Bank of Greece fails to grant the authorization within the above named period of time, the lapse of such deadline is deemed as denial of the authorization.

**A granted authorization may be revoked**

The Bank of Greece may revoke the granted authorization in the following cases:
- In the event that the credit institution does not make use of the authorization within twelve (12) months from the obtainment of such authorization, unless an extended period of time to commence operation is permitted pursuant to the specific granted
authorization; expressly withdraws its right to use the granted authorization; ceases to engage in business for more than six (6) months; fails or refuses to increase its equity capital; obstructs in any way whatsoever the supervision exercised by the Bank of Greece; does not to comply with the provisions of the applicable legislation to such an extent that it may jeopardize its solvency or the effective supervision exercised by the Bank of Greece.

- The granted authorization is based on false, inaccurate or misleading statements.
- The credit institution fails to maintain adequate equity capital or may no longer ensure the fulfillment of its obligations and more specifically may no longer secure the repayable funds to its creditors.
- The terms and conditions of the granted authorization are no longer met.
- The laws, regulations or administrative provisions of a third country governing one or more natural or legal entities with which the credit institution has close links prevent the effective exercise of the supervisory duties of the Bank of Greece, or the structure of the credit institution’s group has changed in such a way that prevents the effective performance of the supervisory duties of the Bank of Greece.

The Bank of Greece shall also revoke the granted authorization in any case provided by the applicable legislation as in force from time to time.
The decisions of the Bank of Greece are subject to appeal before the Council of State (the Supreme Administrative Court).
Has something changed in the process of starting up a company in Greece?

Yes. As of 4th April 2011, a new process for setting up companies has been introduced by virtue of law 3853/2010 and Joint Ministerial Decision K1- 802 (Government Gazette issue 470B/23.3.2011).

This new process provides for the replacement of all the existing public authorities competent for the completion of the various steps required for the set up of a company, by one single authority, the One Stop Shop.

One Stop Shops are, depending on the company type, the Chambers of Commerce and the certified Notaries, and more specifically, Chambers accommodate the start up of personal companies, whereas Notaries are the One Stop Shops for SAs and LLCs, as well as for the personal companies that according to special legislation need to have their articles of association drafted by a Notary.

Furthermore, a new single electronic company registry, G.E.MH (Geniko Emporiko Mitroo – pronounced “ge-mi”) has been launched and replaced the existing companies’ registries kept at the Prefectures and Courts of First Instance.

Therefore, all companies are, as of the 4th of April, set up through One Stop Shops and registered only with G.E.MH, except for the ones destined to function as health regulated establishments (cafeterias, restaurants, pubs, etc).

Due to the existing legislation requiring for a special license to be tendered to these companies prior to their set up, the “old” procedure has to be followed, and one must still visit each authority separately, although, instead of the Prefecture, the competent chamber of commerce is responsible for the registration of the company with G.E.MH, as Chambers of Commerce apart from their role as One Stop Shops also function as G.E.MH services keeping the company’s file throughout its entire life.

Who can be founder to a Societe Anonyme (Anonimi Etairia) in Greece?

An SA may be founded by just one (single member SA) or more natural or legal persons aged eighteen years old or more. Should a younger person wish to participate at the founding of an SA he or she may do so only upon magisterial permission.

What is the minimum share capital required and when should I deposit it?

The founder or founders must concentrate a minimum amount of 60.000 Euros (save for specially regulated areas where share capital requirements are higher) and it must be deposited at a bank account during the setting up of the company.

However, this amount may not always be in cash, it may also comprise of contributions in kind, such as real estate, etc.
However, if part of the initial capital (maximum 50%) comprises of contributions in kind, an advance valuation should be carried out, according to article 9 of Greek Law 2190/1920.

**What are the privileges of setting up an SA?**

In contrast to personal companies, the assets of the company are clearly distinguished from the assets of the founders/partners, due to the company’s legal personality. This effectively means that the company alone, is liable for its debts and obligations, with its own assets, whereas the partners' personal assets cannot be used for that purpose.

**Which is the authority responsible for the setting up of an SA and where are its whereabouts?**

As of 4th April 2011, by virtue of law 3853/2010, notaries act as One Stop Shop services for setting up SAs and LTD companies, as well as all personal companies that, according to special legislation must have their articles of association notarized. However, not all notaries within the Greek territory are certified as One Stop Shop Services.

The official list of the certified notaries can be found at the website of the General Commercial Registry (Geniko Emporiko Mitrwo - G.E.MH) [www.businessportal.gr](http://www.businessportal.gr), as well as at the website of the Hellenic Notary Association [www.hellenicnotaryassociation.gr](http://www.hellenicnotaryassociation.gr) (under construction), where one can be informed about their address, contact details, opening hours, and methods of payment.

**What is the estimated amount for the setting up of an SA?**

The amount varies according to the number of the founders, the share capital and the notary’s and lawyer’s fee. (The website of G.E.MH - [www.businessportal.gr](http://www.businessportal.gr) will soon be able to provide free software for the calculation of the exact cost of registering a company).

The entire process involves the following costs:
1. The Company Establishment Note (70 Euros)
In case the founders are over 3 persons, the cost is increased by 5 Euros for each additional founder.
2. Registration fee with G.E.MH (10 Euros).
3. Chamber registration fee depending on the respective Chamber.
5. Capital Accumulation Tax (1% of the capital stated in the Articles of Association)
6. Duty paid to the Hellenic Competition Commission (1‰ of the capital stated in the Articles of Association).
7. Notary fee amounting to 480 € for drafting the contract plus 6€ per page, plus 23% VAT. The copies cost 5 € per page, plus 23% VAT.
8. Attorney fee: Primarily upon agreement but minimum fees are calculated on the company’s capital starting from 1% for capital up to 44.020,54€, and then 0,5% for the amount exceeding 44.020,54€. Also, 23% VAT is charged on lawyer’s services.
Are these amounts refundable in case the start up is canceled for any reason?

Only the Company Establishment Note is not refundable, in the event that the process is canceled due to fault of the founders. Lawyer’s and Notary’s fee may or may not be refundable, however this is upon agreement between the parts and it is not described in the law.

When, where and how can I make the payment?

Element 1 above must be paid upon appearance at the Notary’s office, whereas 2-7 of the above mentioned amounts may be payed later on in cash. If the total amount exceeds 1.500€, the payment may be made by bank cheque, or by bank deposit to any bank, or via web/phone banking services at the account of the Central Agency of G.E.MH (Account number: 5051052381-136, IBAN GR 19 0172 0510 0050 5105 2381 136).

Is the presence of a lawyer mandatory for signing the articles of association before the Notary- One Stop Shop?

Yes, should the company share capital exceed 100.000€. However, it is highly advisable that a lawyer is always consulted when drafting the articles of association and signs the contracts, so that the client's rights are safeguarded.

What information do I have to have decide about before I visit the Notary?

You need to decide about certain company-related information to be included in the Articles of Association, such as:

- Company name and purposes
  Note: the company name must, according to the commercial legislation, not be identical to already existing company names. The G.E.MH electronic database provides through the G.E.MH website (www.businessregistry.gr) with free access everyone wishing to check the existing company names and distinctive titles throughout the Greek territory.
- Registered seat of the company
- Duration of the company
- Amount and method of payment of share capital
- Types of shares, quantity of shares, nominal value and issue of shares
- Number of shares for each type, if more than one type of shares exist
- Conversion of registered shares to bearer shares, or conversion of bearer shares to registered shares
- Meeting, formation, operation, and responsibilities of the Board of Directors
- Meeting, formation, operation, and responsibilities of the General Assembly
- Auditors
- Shareholders’ rights
- Balance sheet and allocation of profits
- Dissolution of the company and liquidation of assets
Should I have actual premises for my company’ seat?

Yes. The Notary will require a lease agreement certified by the competent Tax Authority (D.O.Y), or, in case the premises are owned, the title deed.
Else, if the premises were granted free of charge by a third party you need to provide an official statement of granting permission to use the premises as the seat of the company under establishment, including the grantor’s certified signature.

Where can I find the forms I need to fill out before I visit the Notary’s premises?

All the documentation necessary can be provided from the Notary, however this will delay the whole process if made at the same day of the start up of the company. Therefore, it is best if you download and fill out the tax statement forms (M) and Capital Accumulation Tax form from the website of the General Secretariat for Information Systems of the Ministry of Economy and Finance (www.gsis.gr) and all the remaining forms at the information platform of G.E.MH (www.businessportal.gr) before you visit the Notary.

What exactly do the “M” forms stand for?

M1 or M3 form (Application for the acquisition of a Tax Identification Number for natural or legal persons, respectively) and M7 form (Declaration of Taxpayers relations/ representation) are completed and filed in order for the founders to acquire a Greek Tax Identification Number.
M6 form (statement of Business activities) is to declare the additional activities the SA will exercise.
M8 form (statement of members / partners of legal persons) is to declare the members or partners of the SA.

What other documentation do I have to tender to the Notary?

Apart from the company’s premises relevant documentation (see previous question) and tax forms (M forms and Capital Accumulation Tax Statement), there is a series of additional documentation that must be tendered to the Notary:

A. Documents regarding founders who are natural persons
National identity card for Greek citizens, identity card or passport for citizens of EU member states, passport for citizens of non-EU member states and residence permit, if residing within the country. The founders’ representative may also submit to the One Stop Shop certified copies of these documents.
Residence permit for the exercise of independent financial activity for citizens of non-EU member states who shall participate as general partners in general partnership company and limited partnership company, or shall be appointed as managers in a limited liability company, or as legal representatives in a public limited company (SA).

B. Documents regarding founders who are resident legal persons
An exact copy of the company’s codified Articles of Association.
In terms of public limited companies, it is required to submit the Issues of the Government Gazette that relate to the legal representation of the company as well
as to the Board of Directors’ decision regarding the participation of the public limited company in the company under establishment.

C. Documents regarding founders who are foreign legal persons
- Duly translated Articles of Association that bear an “apostille”, according to article 4 of the Hague Convention of 5 October 1961 is necessary. If the country of establishment is not a signatory to the Hague Convention, a certified copy by a consulate is needed.
- Certification by a competent authority of the legal person’s country of establishment to verify the existence of the company.
- Certified copy of the authorization document which appoints the legal representative in Greece.

D. Further Documents
If the establishment procedure is carried out by a representative, he/she should produce an authorization granted by the founders that bears the certified signatures of the founders.

Do I need to appear in person?
No. In the event that you do not wish to appear before the Notary, you need to have the required documents, applications, official statements etc signed, and have a duly appointed proxy who will also have the power to act on your behalf by any action necessary for the purposes of starting up the company.

What exactly will the One Stop Shop do to set up my company?
The One Stop Shop shall carry out an electronic pre-check and pre-approval control using the G.E.MH electronic platform to use the company name and distinctive title proposed by the company under establishment and in case they are identical to an existing one, then the One Stop Shop must upon communication with the founders or the legal representative or an authorised third party, alter the company name where necessary.
The One Stop Shop shall also check whether the members of the Board of Directors of the public limited company (SA) who are shareholders holding more than 3% of the share capital, are registered with the Insurance Organisation for the Self-Employed (OAEE)* and whether they have a social security clearance certificate both by OAEE and IKA (Social Security Fund).
In case that it is not possible to acquire an on-line social security clearance certificate for any of the members of the Board of Directors of the public limited company (SA), the One Stop Shop, after receiving the relevant notification, shall request from the member in question or his/her representative to proceed to the competent department of OAEE/ I.K.A and acquire the required social security clearance certificate within a deadline of maximum ten (10) working days.
Furthermore, the One Stop Shop shall insure that a tax clearance certificate be provided to each founder of the company under establishment.
After all of the above steps has been completed, the One Stop Shop will register the company with G.E.MH and provide it with the relevant G.E.MH number and Tax Identification Number, automatically through web services.
The date of the G.E.MH number acquisition is the date of the acquisition of the legal personality of the S.A.

Last but not least, the One Stop Shop will register the company with the competent Chamber of Commerce, send a notification to the National Printing House so that the set up is also published at the Government Gazette, register the founders with O.A.E.E and send copies of the company start up certificate to the Prefecture and transmit the company entire file to the Chamber of Commerce, as this will be the company’s G.E.MH authority, responsible for the keeping of its record with G.E.MH.

* IMPORTANT: Keep in mind that members of the Board of Directors of public limited companies (SA) who are also shareholders holding more than 3% of the share capital have to be insured to the self-employed pension scheme (OAEE). Contributions are paid in bi-monthly installments and their costs vary, starting from (approximately) 300euros/month.

How can I access my file and data on line?

It is possible to access the file and data through the website of G.C.R. by using a username and password provided by the One Stop Shops upon submission of a request and payment of an annual fee of 15 Euros.
BANKING SYSTEM
FINANCE
INVESTMENT
Please describe in general the banking system in Greece.

Banks in Greece are one of the most significant pillars of the economy. In the past decade they have extensively funded all major investment activities and the modernization of the infrastructure of the country along with consumers and SME’s.

A major distinction which can be drawn is the one between public and private banks. The number of banks owned or controlled by the Greek State has significantly been reduced in the last years. Today, National Bank of Greece (to a certain extent), Agricultural Bank of Greece and the Post Savings Bank constitute the main representatives of state influence in the economy. Private banks include Alpha Bank, EFG Eurobank Ergasias (a decision for the merger of these two banks with the participation of the Qatar Foundation creating the biggest bank in Greece and one of the biggest in Southeastern Europe was being implemented at the time when this analysis was written), Piraeus Bank, Marfin Egnatia Bank, Citibank and Millenium Bank. The French banks have “invaded” the Greek market with Societe General acquiring Geniki Bank and Credit Acrigole acquiring the Commercial Bank of Greece. Furthermore, certain foreign banks have established themselves in Greece either through a branch or a representative office.

The Bank of Greece is the regulatory authority in the country. It is a member of the Eurosystem since Greece is a member of the Eurozone and its Director sits in the Board of the European Central Bank.

The Greek banks are of course suffering from the severe financial situation of the country. Although the financial crisis in Greece was mainly a crisis of the Greek State the banks where indirectly affected as they lost access to the market and had to find refuge to the European Central Bank and the Bank of Greece for liquidity in a number of occasions. It is highly expected that further mergers and acquisitions will take place in the banking sector. As a president of one of the major banks in Greece has said “there is space for 2,5 banks in the Greek economy.” Furthermore, it is highly likely that following the implementation of the European Council decisions of October 27th, the Greek State will become a major shareholder in a number of banks, thereby raising concerns about their lending policies and a potential lack of independence of the banking sector.

What is the legal framework governing the provision of banking services in Greece?

Greek law and regulates the establishment and operation as well as the supervisory status of credit institutions.


More specifically, Law 3601/2007 (hereinafter the “Law”) provides for, a) the establishment and operation of the business of credit institutions b) the activities of the credit institutions and c) the supervision on credit institutions and their activities.

**Which activities may be considered banking activities under Greek law?**

According to article 2 of the Law, credit institutions are undertakings whose business is to receive deposits or other repayable funds from the public and to grant loans or other credit for their own account.

Furthermore, art. 11 of the Law, stipulates the activities of the credit institutions as follows:

1. Acceptance of deposits and other repayable funds
2. Lending including, inter alia: consumer credit, mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting)
3. Financial leasing
4. Money transfer services
5. Issuing and administering means of payment (e.g. credit cards, travelers’ cheques and bankers’ drafts)
6. Guarantees and commitments
7. Trading for own account or for account of customers in:
   (a) money market instruments (cheques, bills, certificates of deposit, etc.);
   (b) foreign exchange;
   (c) financial futures and options;
   (d) exchange and interest rate instruments; or
   (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice on mergers and purchase of undertakings
10. Money broking
11. Portfolio management and advice  
12. Safekeeping and administration of securities  
13. Credit reference services  
14. Safe custody services  

What are the various ways under which these banking activities may be provided in Greece by entities coming from the EU?

All the activities mentioned above, also included in Annex 1 of Directive 2006/48 of the EC, can be freely exercised by credit institutions of any Member State, either by the establishment of a branch, or by way of provision of services without establishment (cross border), and provided of course that they are regulated in their home member state.

How is the freedom to provide services in accordance with EU Law being implemented under Greek law?

According to articles 49-55 of the EU Treaty, the citizens of a member state can provide services to other member states freely.  

Greek Law 3106/2007 in implementation of the Directive 2006/48, regulates the freedom to provide services in Greece by entities established in other member states. According to art. 15, any credit institution of another Member State wishing to exercise the freedom to provide services by carrying on its activities within the Greek territory for the first time, should meet the following requirements:

a. It must have received a license to operate in another member state and must be supervised by the competent authority of the other member state.  
b. The activities that the credit institution intends to carry on in the Greek territory, should be included in its operation license.  
c. The credit institution of another Member State must notify the competent authorities of the home Member State, of the activities on the above list which it intends to carry on. The competent authorities of the home Member State shall, within one month of receipt of the above notification send that notification to the competent authority of Greece, i.e. the Bank of Greece. This is a direct consequence of the “Single license system”.  
d. the credit institutions should comply with the rules of the Greek territory in connection with banking legislation as well as legal rules that have been adopted in the interests of the general interest.  
e. the credit institutions advertising their services through all available means of communication in the Greek territory are subject to any rules governing the form and the content of such advertising adopted in the interests of the general interest.

More specifically, the competent authority of the home member state must only notify to the Bank of Greece its intention to provide cross border mutually accepted services in Greece. Such activities should be provided in the same manner as they are provided in their home country, and they should not violate the provisions of the legislation on credit institutions, capital market and consumer protection that aim at protecting
investors and consumers of banking products and services or other provisions of public interest.

How is the provision of banking services in Greece by credit institutions of other member states regulated?

The Bank of Greece, pursuant to Article 55A of its Statute, (Law 3424/7 December 1927) exercises prudential supervision over credit institutions. The object of such supervision is to ensure the stability and efficiency of the banking system and, more generally, the smooth operation and stability of the Greek financial system. The Department for the Supervision of Credit and Financial Institutions of the Bank of Greece is responsible for the prudential supervision of credit and financial institutions.

The provisions of art. 25 of Law 3106/2007, regulate the supervision of credit institutions and their activities. The Bank of Greece supervises the credit institutions with registered seat in Greece, and their branch offices in abroad, as well as the branch offices in Greece of credit institutions of third countries. In contrast, branch offices of credit institution of other member states, are supervised by the competent authority of the home member state except a) the supervision of their cash flow which is also supervised by the Bank of Greece in cooperation with the authority of the home member state and b) the supervision that their activities are provided in the same manner as they are provided in their home country, and that they do not violate the provisions of the Greek legislation.

Especially the provision of cross border services by credit institutions authorized in other member state in Greece, is only supervised by the competent authority of the home member state. According to art. 16 of Law 3106/2007, credit institutions authorized in other member states which are pursuing activities listed in art. 11 of Law 3106/07 as above, through provision of services without establishment in Greece, may pursue these activities in the same manner as in their home country, provided they do not violate the provisions of the legislation on credit institutions, capital market and consumer protection or other provisions of public interest.

Furthermore, the above credit institutions may advertise the services provided by them, subject to the provisions in force in Greece governing the type and content of such advertisement with a view to supplying sufficient and correct information to the public. The Bank of Greece within the scope to control the transparency and conditions of transactions may require adjustments to the content of the advertisements.

What are the potential measures and penalties on credit institutions authorized in other member states in case of breach of their obligations?

According to the art. 65 of Law 3106/07, in case a credit institution authorized in another member state and providing services in Greece is not complying with Law 3106/2007, the Bank of Greece shall require the credit institution to comply with these provisions. If the credit institution fails to comply, the Bank of Greece shall inform accordingly the competent authorities of the credit institution’s home member state, which shall take all appropriate measures for compliance. If, despite the measures taken by the competent
authorities of the home member state or if such measures prove inadequate or are not available in the member state, the credit institution persists in violating the related provisions, the Bank of Greece shall, after informing the competent authorities of the member state, take appropriate measures to prevent or condemn further irregularities or impose penalties according to the provision of Law 3106/07. It may also prevent the credit institution from initiating further transactions in Greece.

The Bank of Greece, prior to initiating the procedure referred to above, may take any precautionary judicial or extrajudicial measures it deems necessary to protect the interests of depositors, investors or other persons to whom services are provided, informing of such measures the Commission of the European Union and the authorities of the home member state.

In case of withdrawal of the authorization of a credit institution by the competent authority of the member state, the Bank of Greece shall prevent the credit institution from initiating further transactions in Greece and shall take the necessary measures to secure the interest of depositors, investors or other persons to whom services are provided.

Governor's Acts 336/29 February 1984, 2593/24 February 2004 and 2612/13 November 2008, established the Banking and Credit Committee (BCC), a body composed of members of the Administration and Heads of specific Departments of the Bank of Greece, with a main duty to impose fines and penalties for violations of the above provisions on credit institutions.

Are there any consumer protection provisions that those active in the banking sector in Greece should follow?

Credit institutions must abide by Greek consumer protection and advertising legislation.

Please find below a presentation of the most important provisions of the Greek legislation on Consumer Protection and Advertising:

The general provisions of the Greek Civil Code (in particularly the articles GCC 57, GCC 281 and GCC 288), and Law 2251/1994 on Consumers’ Protection establish a regulatory framework shelter for consumers against creditors’ behaviours, being described as abusive and unfair.

Law 2251/1994, stipulates that contracts - including the contracts within the financial services market – must not contain unfair terms. This law protects consumers’ economic interests vis-a-vis a potential abuse of power by the suppliers of financial services.

More specifically the law protects consumers from the standard contracts prepared by financial institutions that sometimes exclude essential rights of consumers. Such general transaction terms (GOS), (i.e. terms that have been made in advance for an indefinite number of future contracts) are prohibited and void, if they result in excessive imbalance of rights and obligations of the parties to the detriment of consumers.

Greek courts have already issued a number of important decisions on unfair terms used by credit institutions. For example, a) terms, which give the financial supplier the right to alter unilaterally basic terms of a contract b) a term that limits the liability of the banks
only for fraud or gross negligence of its employee, excluding in this way the responsibilit-
ity for tight negligence, c) a term that imposes a cost of inactivity in deposit accounts, or
d) a term authorizing the supplier to dissolve the contract in case there is some delay in
the repayment of the credit, have already been characterized by the courts as unfair and
thus void.
What is the aim of Investment Incentives Law (IIL)?

In Greece the basic legislative instrument for the promotion of private investments (both foreign and domestic) is the IIL (Law 3908/2011), which provides the basic mechanism by which the disposal of cash grants and subsidies from the state budget is achieved, for the support of private business initiatives. In simple terms, enterprises that fall under the IIL, and which fulfill the strict conditions determined by it, can apply to the respective authority and receive considerable cash grants, subsidies or tax exemption from the state, so they can start or further develop their business activities in Greece.

What are the main characteristics of the IIL?

The IIL:
- Contains a defined annual budget and an aid ceiling.
- Addresses all sectors of the economy, except those expressly articulated in Article 2 of the Law (see below).
- Is mindful of scarce public funds by providing incentives through tax exemptions, subsidies, leasing and soft loans. For every one euro of subsidy provided, three euro of tax exemptions are provided.
- Provides for both the electronic submission of every investment plan and the submission in hard copy to the Investor Service Offices.
- Contains specified and fixed application deadlines (April and October) except for Major Investment Plans (>€50 million), which are submitted throughout the year.
- Introduces a new evaluation process by establishing the National Register of Evaluators and Auditors.
- Focuses on sustainable investment projects that are environmentally friendly, promote innovation, regional cohesion, youth entrepreneurship, and create jobs.
- Provides for aid rates from 15% to 55% dependent on the Region that the investment is realised, and on the size of the company.

Which investment categories fall within the scope of the IIL?

Investment plans are divided into the following categories:
(a) General Entrepreneurship
Target Group: all enterprises irrespective of sector.
Provides: tax breaks of up to 100% of the maximum allowable amount of aid.
(b) Technological Development
Target Group: enterprises that invest in technological and operational innovation and want to upgrade their technology infrastructure.
Provides: all forms of aid. The rate of subsidy and leasing subsidy may reach up to 80% of the maximum allowable amount of aid. For new enterprises this percentage is increased by 10%.
(c) Regional Cohesion
Target Group: investors with projects that address local needs or capitalise on local competitive advantages.
Provides: all forms of aid. The subsidy rate and leasing subsidy may reach up to 70% of the maximum allowable amount of aid. For new enterprises this percentage is increased by 10%.
(d) Youth Entrepreneurship
Target Group: investors from 20 to 40-years old.
Provides: aid for virtually all costs (including operational) for five years from the start of the business.
Total aid may reach up to 1,000,000 euro.

(e) Large Investment Plans
Target Group: investments with a budget of at least 50,000,000 euro.
Provides: all forms of aid, either in one form or a combination of forms. The level of aid decreases as the amount of investment increases. The percentage of the subsidy may not exceed 60% of total aid.

(f) Integrated, Multi-Annual Business Plans
Target Group: companies legally formed at least five years previous to application, to implement integrated multi-annual (2-5 years) business plans with a budget of at least 2,000,000 euro in total.
Promotes: technological, administrative, organisational and business modernisation. 100% of the maximum regional aid applicable shall be granted.

(g) Partnerships and Networking
Target Group: partnerships and networking configurations or clusters. These clusters shall be comprised of at least ten enterprises in the Regions of Attica and Thessaloniki and of at least five enterprises in other regions, operating in the form of a consortium.
Provides: for any form of aid.

What sectors are excluded from the aid scheme?

1. Sectors excluded from the General Block Exemption Regulation (Regulation No 800/2008 of 6 August 2008, OJ L 214 of 9.8.2008, p.3) are:
   (a) the steel sector, as defined in Article 2 (29) of the Regulation;
   (b) the synthetic fibers sector, as defined in Article 2 (30) of the Regulation;
   (c) the coal sector, as ‘coal’ is defined in Regulation No 1407/2002 (OJ L 205 of 2.8.2002, p. 1 ) on State aid to the coal industry;
   (d) the shipbuilding sector, as defined in the framework on State aid to shipbuilding (2003/C 317/06 of 30.12.2003, p. 11).
2. Further, the aid scheme does not apply to the following:
   (a) investment plans of public corporations and organisations or their subsidiaries in which they hold over 49% of the share capital and investment plans of companies in which the State or a public legal person or a first- or second-level local authority holds over 49% of the share capital or which are regularly or occasionally subsidised by them, where the subsidy accounts for over 50% of their annual revenue;
   (b) undertakings which operate in the form of a society, civil partnership or consortium, subject to the provisions of Article 13(1)(d) of the IIL;
   (c) firms in difficulty, as defined in the Community guidelines, from time to time in force, on State aid for rescuing and restructuring firms in difficulty (2004/C 244/02 of 1.10.2004, p. 2) and the General Block Exemption Regulation for small and medium-sized enterprises;
   (d) investment plans implemented at the initiative and on behalf of the State by a private individual on the basis of a works, franchise or service contract;
   (e) investment plans of bodies against which an aid recovery order is pending further to a previous decision by the Commission declaring the aid illegal and incompatible with the Internal Market;
   (f) the following industries and branches of economic activity, as defined on the basis of the ‘National Nomenclature of Economic Activities – Activity Code Numbers 2008,’ as amended by POL 1086/2009:
   - Production of electricity from photovoltaic systems
   - Construction of buildings
   - Civil engineering, with the exception of the construction of coastal and port works and construction works for coastal and port structures
   - Specialised construction activities
   - Wholesale and retail trade and repair of motor vehicles and motorcycles
   - Wholesale and retail trade, except motor vehicles and motorcycles
   - Food and beverage service activities
   - Programming and broadcasting activities
   - Financial service activities
   - Real estate activities

Avgerinos & Partners Law Firm
Legal and accounting activities
Head office activities, consultancy service activities
Architectural and engineering activities and activities by engineers
Advertising and market research
Veterinary activities
Rental and leasing activities
Employment activities
Travel and related activities
Security and investigation activities
 Provision of services to buildings and outdoor spaces
Public administration and defence – compulsory social security
Education
Human health activities
Social work activities without accommodation
Creative activities, arts and entertainment
Gambling and betting activities
Sporting activities and recreational and leisure activities
Organisations [membership] activities
Other personal service activities
Activities of households as employers of domestic personnel
Private households activities concerning the production of non distinct goods and services for own use
Activities of extraterritorial organisations and bodies

3. Finally, the aid scheme does not apply to investments to:
   (a) establish, extend or modernise hotel facilities. This does not include investments to establish, extend or modernise an integrated form of hotel facility belonging to or being upgraded to at least the three-star category, or investments in health tourism. Also excluded are investments to convert traditional or listed buildings into hotel facilities of at least the three-star category, and investments to modernise hotel facilities that operate in traditional or listed buildings belonging to or being upgraded to at least the three-star category;
   (b) modernise an integrated form of hotel facility within 6 years of the date on which the facility opened or the date on which the decision was issued to complete an investment to modernise the facility. The 6-year period from when the facility referred to in this subparagraph opened shall also include the period during which the facility operated as rented rooms or apartments, when it is about hotel facilities that resulted from the obligatory conversion of a rented rooms or apartments facility;
   (c) erect, extend or modernise self-catering accommodation, rented rooms and rented furnished apartments, regardless of category.

Types of investment plans in the fishing and aquaculture industry, and in the agricultural sector, may be declared eligible by joint decision of the Minister for the Economy, Competitiveness & Shipping and the Minister for Rural Development & and Food.

What are the types of aid?
   (a) Tax relief: tax relief comprising exemption from payment of income tax on pre-tax profits which result, according to tax law, from any and all of the enterprise’s activities.
   (b) Subsidy: gratis payment by the State of a sum of money to cover part of the subsidised expenditure of the investment.
   (c) Leasing subsidy: includes payment by the State of a portion of the installments paid under a leasing agreement executed to acquire new machinery and/or other equipment.
   (d) Soft loans by the Credit Guarantee Fund for Small and Micro Enterprises (TEMPME S.A.): the amount to be covered by a bank loan may be funded by soft loans from credit institutions that cooperate with TEMPME enterprises.

The aid referred to above shall be aggregated for the purpose of determining the total amount of aid allocated to the investment project. In this case the benefit of the funding above is included in total aid, which may not exceed the limits delineated on the Regional State Aid Map.
What is TEMPME?
TEMPME is Greece’s new national fund to support enterprises, particularly small, medium, and innovative. TEMPME operates as a Societe Anonyme in order to provide leverage financing, through revolving debt, bank guarantees and counter guarantees, joint ventures and equity participation. TEMPME does not deal directly with businesses. Businesses contact partner banks, which are selected by TEMPME through an open international tender. TEMPME is designed to improve the access of finance to enterprises for their development, to help create new enterprises, to enable and enhance productivity, and to facilitate the entry of new products and services to market.

How does TEMPME work?
Under the TEMPME umbrella, funds are created for green development, entrepreneurship, outward-oriented business activities, fisheries, agricultural development, and social entrepreneurship. For every euro the state guarantees, the banks shall guarantee two. The capital is available to firms in the form of friendly and soft loans, through the banks. With guarantees from TEMPME, enterprises may borrow total secured business loans with significantly less collateral than normally required by banks without the TEMPME guarantee.

What is the evaluation procedure?
(a) Pre-evaluation
Officials of the Investor Service Office review the application and, if complete, issue a receipt. In the event that any documents are missing, the investor must submit them within 10 days of notification.
(b) Evaluation
The judicial review and assessment process shall be completed within 40 days from the date the complete file has been submitted. The investor may monitor the progress of his/her file online.
(c) Results
Posting of provisional results in which investors may view the evaluation of their application and, if deemed necessary, lodge a complaint. The evaluation of the complaint is to be completed within 15 days from the date the complaint is formally lodged.
The entire application and evaluation process does not exceed 6 months

What are the aid rates for each region of Greece?
The percentage of aid for each investment plan shall depend on the size of the enterprise that proposes the investment and the region in which it is implemented, but shall not exceed 50% of the subsidised cost of the investment plan. The aid percentages have been defined, for the initial application of the law, on the basis of the per capita gross domestic product (GDP) of each region in 2007, compared with the average per capita GDP of Greece in that year. The enterprises are divided into large, medium-sized, small and micro enterprises in accordance with the relevant EU classification (General Block Exemption Regulation, Annex I).
The aid rates for each prefecture and size of enterprise, on the basis of the above criteria, are described in the Table below (Regional State Aid Map)

<table>
<thead>
<tr>
<th>Region</th>
<th>Prefecture Zone</th>
<th>Large enterprises</th>
<th>Medium-size enterprises</th>
<th>Small and micro enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Aegean</td>
<td>Cyclades</td>
<td>15%</td>
<td>25%</td>
<td>35%</td>
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<td></td>
<td>Dodecanese</td>
<td>15%</td>
<td>25%</td>
<td>35%</td>
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<td>Sterea Ellada</td>
<td>Fthiotida</td>
<td>15%</td>
<td>25%</td>
<td>35%</td>
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<td></td>
<td>Fokida</td>
<td>20%</td>
<td>30%</td>
<td>40%</td>
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<td></td>
<td>Evia</td>
<td>15%</td>
<td>25%</td>
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<td></td>
<td>Viotia</td>
<td>15%</td>
<td>20%</td>
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<td></td>
<td>Evritania</td>
<td>20%</td>
<td>30%</td>
<td>40%</td>
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<tr>
<td>Central Macedonia</td>
<td>Thessaloniki</td>
<td>30%</td>
<td>35%</td>
<td>40%</td>
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<tr>
<td>Region</td>
<td>Greece</td>
<td>Western Macedonia</td>
<td>Attica</td>
<td>Thessalia</td>
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What should be the minimum value of investment?

The minimum value required in order for an investment plan to be approved for aid shall be stipulated, depending on the size of the body, in accordance with the relevant EU classification (General Block Exemption Regulation, Annex I) as follows:

- for large enterprises: 1.000.000 euro
- for medium-sized enterprises: 500.000 euro
What should be the legal form of aided enterprises?
The aid scheme is intended for enterprises established in Greece in the form of:
(a) Sole proprietorships, except those whose investment plan is less than 300,000 euro
(b) Commercial companies
(c) Cooperatives.
Companies in formation may apply for aid, provided that they have been formed within the time limit set in the decision approving the aid and, in any event, before any aid is paid.

Is there any limit for the investor’s own contribution?
Yes, the percentage of the investor’s own contribution to investments which qualify for capital grant shall be no less than 25% of the eligible expenditure.

What are the terms, conditions and restrictions for investment loans?
If the investment plan put forward for aid includes provision for the use of a loan, the said loan must:
(a) have a term of at least 4 years
(b) take the form of a bank loan or a loan from some other financial institution or a debenture loan issued with or without a public offering. It cannot take the form of an open account
(c) be obtained in order to implement the investment plan, as expressly stated in the loan agreement
(d) have been approved by the lending bank or financial institution on the date of submission of the application for aid. The relevant letter of approval must state the terms on which the loan has been granted (specifically the amount, the term, the purpose, the interest rate, the period of grace and collateral) and must be included in the file submitted with the application for aid.
The investment loan may also be obtained in foreign currency.
What is the aim of Fast Track Law?
The principal aim of Fast Track Law (Law 3894/2010) is to accelerate the licensing procedures for investments deemed strategic to the Greek economy.

How does Fast Track work?
Fast Track works as an accelerating and transparency enhancement mechanism for the procedures relating to the implementation of strategic investments in Greece, whether these consist of Private-Private ventures (a private investment on a private asset, such as a hotel or tourist development, an industry, etc.) or Public-Private Partnerships (a private investment in a state asset/property (such as the development of the old airport of Athens Site, the development of Greek State-owned tourism real estate, development of an airport, etc.). Fast Track accelerates the licensing procedure by a) creating a legally-binding timeframe for the issuance of licenses with significantly reduced deadlines, b) immediately activating the investment process, and c) enhancing the speed and efficiency of public bodies’ relevant actions.

What is a strategic investment?
A strategic investment is any investment that has both quantitative characteristics (e.g. has a large budget, creates numerous jobs) and/or qualitative characteristics (e.g. promotes innovation, protects the environment) as stipulated in Fast Track Law. Strategic investments are productive investments that deliver high-impact, positive results to the Greek economy and create value added for the country as a whole and its citizens. Fast Track is an “extraordinary” procedure to foster strategic investments and is not designed to include every investment plan in its provisions. Fast Track applies to major investments with significant multiplier affects on Greece’s GDP. Fast Track is designed to attract investments that utilize and capitalize on the geopolitical strategic advantage that Greece offers, both as a domestic investment destination and within the broad context of the global investment map.

What are the requirements for an investment to be “strategic”? 
According to the Fast Track Law, “strategic” is the investment that meets at least one of the following conditions:
(a) The investment’s total cost exceeds the amount of 200.000.000 euro; or
(b) The investment’s total cost exceeds the amount of 75.000.000 euro and at the same time the investment causes the creation of at least 200 new employment contracts; or
(c) Regardless of the investment’s total cost it is foreseen that an amount of at least 3,000,000 euro is invested every 3 years in high technology and innovation projects to be integrated in the strategic investment; or
(d) The investment causes the creation in a sustainable manner of at least 250 new jobs; or
(e) The investment promotes Greece’s environmental protection; or
(f) The investment creates an increase in value in Greece in the fields of education, research and technology in the form of qualitative and quantitative increase in knowledge.

Does a strategic investment automatically or necessarily fall under the Fast Track framework?
No. The implementation of a strategic investment under the provisions of Fast Track is voluntary. A solely private investment is included in the Fast Track procedure only if (a) the prospective investor desires such an inclusion, (b) the investment fulfils the law’s requirements, and c) the investment is approved by the Ministerial Committee for Strategic Investments.

Is the approval of an investment plan as a strategic investment mandatory?
Obviously not. Fast Track is an “exceptional” tool. It has not been designed to accommodate just any investment plan or investment initiative. It focuses primarily on large-scale investments with a positive multiplying effect on GDP. It refers practically to investment plans which capitalize on the strategic advantages that Greece can offer on the global map.

How can Fast Track ensure speed and transparency within a chaotic and bureaucratic public sector landscape?
Fast Track introduces a new, integrated framework of rules, procedures, and liabilities into Greece’s public administration, with binding deadlines for the examination and approval or rejection of an investor’s portfolio. The procedure is in full conformity with both Greek and EU legislation.

What is the ultimate objective of the Fast Track legislation?
The ultimate objective is for all investments in Greece to be implemented in a swift and transparent way and to benefit Greece’s economy and society. Greece, first and foremost, aims at capitalising on its strategic advantages so that investment becomes the main driver of economic growth and development. Fast Track, in practice, will lead to beneficial and advantageous results, consolidating the investment procedure in Greece. The Fast Track procedure will initially operate as a pilot application, resulting in the simplification and the acceleration of licensing procedures and, ultimately, to be implemented in the entire gamut of business activities in Greece.

Why is it stated that Fast Track aims to improve not only the acceleration of the investment implementation process but also its transparency?
For three reasons: First, relating to PPPs, Fast Track provides that any such project put forward by the State shall be awarded through international open tenders, in accordance
to EU regulations. And furthermore, Fast Track analytically defines the tendering and evaluation processes, which constitutes a major departure from traditional procedures involving subjective technical and other scoring during the evaluation of bids. Fast Track sets an objective evaluation and selection process, which does not include any committee or subjective scoring at any stage of the evaluation. This is a breakthrough that the investment community will appreciate.

Second, as far as Private-Private ventures are concerned, Fast Track, through its exclusive deadline and deemed-approvals mechanisms, protects an individual investor from any intentional delay or any other type of “extortion” potentially caused by anyone in the permit/licensing pipeline. An investor, whose plan is forwarded within the Fast Track highway, has no reason to succumb to any type of “side arrangements”. No longer can anyone sell an investor the favour of “promoting the case in priority”. Fast Track does it institutionally, as an obligation of the State and by the merit of the Law. The third reason relates to the publicity provisions of Fast Track. All permits, interim or final resolutions, agreements, concessions, etc., shall be introduced to the Greek Parliament for exhaustive review and ratification.

**What are the specific benefits in environmental licensing, building regulations, coastal concessions and expropriations?**

A strategic investment can be implemented only following the approval of environmental terms for its construction and operation at central government level rather than at regional level, while the approved environmental terms are published in the Government Gazette. However, areas of the Natura 2000 network cannot host a strategic investment. With regard to specific city limits and city plans, project-specific building regulations (concerning minimum distances, maximum heights, site coverage ratio, building coefficients etc), which deviate from those normally applicable, may be introduced by virtue of a presidential decree. Moreover, a concession for the use of coastal land, the seashore and the adjacent sea area may be granted for the purpose of a strategic investment on ground of public interest. The existing legislation is not applicable. Finally, in order to facilitate strategic investments, expropriation of private real estate or land plots (including forestry areas) and creation of in rem rights is possible. Fast Track provides special publicity obligations, legal remedies and shorter deadlines for administrative and court procedures.

**What are the “exceptional” provisions of the Fast Track procedure regarding tax relief?**

Fast Track does not provide for any tax allowances except in the instance where, at the discretion of the Greek Parliament, it is deemed to be necessary for the national interest to enact a special tax regime. There will be no tax relief without approval by Law.

**What administrative structure will administer the Fast Track procedures?**

Fast Track provides for a new administrative structure that is responsible for the location of projects and approval, implementation, and monitoring of Fast Track process and its progress in Greece. The Ministerial Committee for Strategic Investments, in which any Minister who has jurisdiction over any part of an investment will participate, is responsible for the approval of investment proposals for Fast Track. Invest in Greece S.A., in its
restructured form, is responsible for the evaluation and support of relevant Fast Track procedures. Invest in Greece operates as a “one-stop shop” and a “special instrument” of public administration regarding the promotion of strategic investments. The Ministerial Committee has the overall supervision of the Fast Track procedure.

**How will the Fast Track framework work in practice? Does it have “overlapping risk” with other frameworks or agencies?**

There is no overlap risk with any other investment framework or department of the Greek State.

Let’s describe step by step the Fast Track process for a specific project:

First, let us assume a Private-Private venture, which fulfills the criteria of qualification. According to the Fast Track Law, the investor prepares and submits to Invest in Greece a comprehensive business and financial plan that describes his investment proposal, the relevant time-plan, capital structure, sources of funds, as well as any other information required by the Fast Track provisions, together with a non-redeemable submission fee (Evaluation Management Fee). Invest in Greece shall evaluate the proposed investment plan and within 15 days shall forward it to the Ministerial Committee with its opinion on its qualification. The Ministerial Committee has a deadline of 20 days to grant its approval. Following approval, the investor submits to Invest in Greece the required management fee (Forwarding Management Fee), a letter of guarantee from a bank and all the documentation required by the licensing regulation. Invest in Greece operates as a “one-stop shop”, and undertakes the responsibility for issuing all required licenses/permits for the realisation of the investment, within the deadlines provided.

Second example, a PPP that complies with the criteria of the Fast Track framework and that the Greek State wishes to channel through the Fast Track highway. Let us assume a public tourism real estate development, which is owned by a public organisation. Until the implementation of the Fast Track, the State had only the option to request that the public organisation (as the project owner) proceed to a tender for the selection of an investor to develop the site, according to specific development requirements. The organisation would be responsible for performing any market sounding, preparing all necessary design and tender documents, interfacing with all other relevant state agencies to secure all permits and licenses required for the tender and the award, setting up project evaluation committees and performing a tender, which would typically involve a technical scoring carried out by members of said committees, which in almost every case would be objected to in courts by other competitors. Furthermore, in doing all this, the project owner would have no leverage over other State agencies to accelerate any process whatsoever so as to match with its tender time plan. That is a typical process for any type of public originated project such as a PPP. The average completion time through the procedure implemented to date has been approximately 2 - 2.5 years. Through the Fast Track procedure, the inclusion of the project automatically results in the commencement of necessary procedures, meaning rapid licensing and the issuance of an international open tender. The awarding of the project will be based on the most advantageous bid—in financial terms —without the intervention of any intermediate, subjective technical evaluation by any other committee. Invest in Greece is responsible for the tender procedures until the selection of a temporary contractor, and
following the completion of the procedures, it delivers to the Developer. Invest in Greece can deploy fast and effectively project teams, with professional advisors to support the process and meet all exclusive deadlines defined in Fast Track.

As seen in the aforementioned examples, the Fast Track framework does not interfere or overlap with any other existing framework or agency. It has been designed to minimise delays and overlapping risks. Fast Track is not a “financial incentive provision mechanism”. Fast Track does not give money, capital grants, subsidies, etc. Fast Track gives speed, transparency and legal contractual certainty to investors who have a solid, sound and tangible investment and who until today have fallen prey to bureaucracy or corruption.

What kind of fees must the investor pay to Invest in Greece?

With his initial application, the investor must pay the amount of 15,000 euro plus VAT (Evaluation Management Fee), which is non-refundable. The latter works as a financial filter and safeguard to ensure the credibility of submitted business plans.

After his investment proposal is approved, the investor has to pay the Forwarding Management Fee which is calculated as follows:

(a) for an investment proposal, the cost of which is up to 100,000,000 euro, the Fee shall be 0.2% of the total investment cost;
(b) for an investment proposal, the cost of which is over 100,000,000 and up to 200,000,000 euro: up to 100,000,000 euro, the Fee shall be 0.2% of the total investment cost; for the amount over 100,000,000 euro, the Fee shall be 0.1% of the total investment cost;
(c) for an investment proposal, the cost of which exceeds the amount of 200,000,000 euro: up to 100,000,000 euro, the Fee shall be 0.2% of the total investment cost; for the amount over 100,000,000 euro and up to 200,000,000 euro, the Fee shall be 0.1% of the total investment cost, and for the amount over 200,000,000 euro, the Fee shall be 0.025% of the total investment cost.

What happens in the case where an investor wants both a capital incentive and the Fast Track process? Isn’t there an overlapping risk?

There is no overlapping or interference risk for either the investor or the public administration. In fact, there is a clear sequence of events and actions, since Fast Track can provide speed and transparency only to solid, sound and robust investment plans. Let’s assume a private investor who wants to make an investment in a private asset, a Private-Private venture. Let us also assume that the investor wishes – either because he does not have 100% secured financing or because he wants to maximise his investment yield – to apply for any or all the benefits available for his investment in the Investment Incentives Law (Law 3908/2011, which may include capital subsidy, tax shield, interest subsidizations, etc). At the same time, the investor, being aware of the benefits of the Fast Track, also wants to request that his investment be approved as a Fast Track qualifying investment. In order to apply for the Fast Track, as described above, the investor should prepare and submit a business and financing plan. In case the investor has not yet secured the financial incentives he requested under Investment Law, Invest in Greece will assess the investor’s financing plan as “pending financial incentives not yet granted”. Therefore, this financing plan does not have a robust, solid financing structure,
unless the investor can demonstrate alternative sources of funding. Therefore, his plan will not be approved under Fast Track. Since the investor is aware of that, it is obvious that first he will secure any financial incentives available to his investment under the Investment Incentives Law and subsequently he will apply to the Fast Track. Otherwise he will have risked his submission fee.

**What happens if an investment plan is not approved by the Ministerial Committee for Strategic Investments?**

If the Ministerial Committee does not approve the investment as a Fast Track qualifying venture or if the investor never applied to Invest in Greece, the investor can still forward his plan within the existing procedures (non-Fast Track) defined for the type of investment envisioned.

**Where can an investor obtain more information or apply for inclusion in Fast Track?**

The investor can contact Invest in Greece S.A. (+30 210 3355700) or fill out the contact form found at http://www.investingreece.gov.gr/default.asp?pid=176&la=1. For applications, the investors should download the application for inclusion in the Fast Track Law from http://www.investingreece.gov.gr/files/FT/Strategic_investments_inclusion_application.pdf.
GENERAL FRAMEWORK

What is the legislation applicable to public procurement contracts?
Public procurement law has been harmonized in the EU and therefore Greece follows the provisions and principles set out by EU law. Directives 2004/18/EC and 2004/17/EC have been transposed into Greek law via Presidential Decrees (PD) 60/2007 and 59/2007 respectively. They constitute the general legislative framework and they apply along with more specific national legislation per procurement category. Greek legal order has specific laws regulating public supplies, services and works. Contracts outside the ambit of the Directives (e.g. those below the Directive thresholds or those of Annex II B of Directive 2004/18/EC etc.) are still subject to specific national legislation and to general rules and principles of EU law: free movement of goods (Article 34 of the Treaty on the Functioning of the EU -TFEU), right of establishment (Article 49 TFEU), freedom to provide services (Article 56 TFEU), non-discrimination and equal treatment, transparency, proportionality and mutual recognition. For reasons of brevity we will not analyse aspects of EU law, which are easily accessible through EU institutions sites and many legal publications, but we would rather focus on Greek specific legislation.

Are there any economic areas where special public procurement rules apply?
Defense and security, public health and public – private partnerships (PPPs) are the main areas where specific legislation applies. In principle, those areas are not exempted from the application of EU law; however, there exist certain peculiarities. The award of works, supplies and service contracts in the areas of defense and security is governed by Directive 2009/81/EC, which has been transposed into Greek law via Law 3978/2011. Specific issues regarding the supply of military equipment are governed by Law 3433/2006. Laws 2955/2001, 3580/2007 and 3918/2011 regulate public procurement in the public health sector. Finally, award procedures for PPP contracts are set out by Law 3389/2005. All relevant national legislation is in line with its European counterpart and in any case it is interpreted and applied by the courts accordingly.

Is there a central agency or an electronic registry consolidating information relating to public procurement?
The newly established Public Procurement Agency (Law 4013/2011) supervises and coordinates national policies in the field of public contracts, framework agreements, public works concession agreements and dynamic purchasing systems. The Agency issues recommendations and regulations on technical or other specialized matters as well as standardized tender documentation and contract models. It also evaluates the efficiency of the competent public authorities, carries out sample checks in pending award procedures and publishes information on the regulatory and legislative framework on public procurement and the respective national and European case-law.
Furthermore, a Central Electronic Public Procurement Registry is set up in the Ministry of Development, for the collection, processing and publication of information concerning public contracts.

PUBLIC SUPPLIES CONTRACTS

What is the relevant legislation?
PD 118/2007 («Supplies Regulation for the Public Sector») regulates supplies contracts awarded by the Greek State and public law legal entities with contract value below the Directive threshold (€ 125,000). For those above the threshold, PD 118/2007 supplements PD 60/2007, insofar as it is compatible with the latter’s provisions. Public supplies contracts awarded by the regional and local authorities are regulated by Law 3463/2006.

What is a contract notice and what are the types of tendering procedures?
A contract notice contains a description of the supply and invites all interested parties to participate in the selection procedure. Publication varies according to the value of the contract and it involves an announcement of the call for tender to the Publications Office of the European Union and a dispatch of a summary to the S series (supplement to the Official Journal-Public procurement notices, and its electronic version, TED), publication in financial newspapers and posting on the website of the contracting authority. Technical specifications attached to the notices mainly concern quality and safety standards for the materials, dimensions, testing, packaging, labeling or any other functional characteristics of the products. The notice may include a clause for the readjustment of prices in case the deadline for the supplies’ delivery exceeds a period of 12 months. When the notice includes such a clause, offers should not be based on fixed prices, otherwise they are rejected. The award procedure may be open to all interested parties or restricted only to a limited number of candidates. A negotiated procedure is possible only under exceptional circumstances, such as in cases of extreme urgency, additional deliveries, when no tenders or no suitable tenders have been submitted, when a certain manufacturer has exclusive rights upon certain goods etc.

What else do I need to know regarding the submission of a tender?
In open and restricted procedures, tenderers are required to submit a technical and financial offer, a letter of guarantee, their legal documents of lawful representation, as well as several documents proving their legal status, their economic and financial standing, their technical equipment and personnel, the suitability of the products in offer as well as product samples or photos. The contracting authorities may ask for clarifications on specific points of the tender. The contractor submits additional documentation, such as judicial record, certificates issued by the competent Companies Registry, performance bond, insurance policy and proof of non-insolvency. Two or more tenderers may submit a joint offer, specifying participation percentages. In such a case, each member is jointly and severally liable to the contracting authority. The prices submitted in the tender must be quoted per unit, including all possible charges for delivery, third party fees or other costs or duties. The country of origin as well as the manufacturer of the final products must be mentioned in the tender. A letter of guarantee, amounting to 5% of the budgeted price is required by all participating tenders. The contractor submits a performance bond amounting to 10% of the contract value.
What are the award criteria?
The award criteria can be either “the lowest price” or “the most economically advantage tender”. The latter may be assessed on the basis of the offered price, installation, operation and maintenance costs, compliance with technical specifications, proper operation or preservation guarantee, quality of after-sales services, early date of delivery etc. Each criterion is scored independently and may be weighed differently in the total score. The contract note designates the applicable criteria and the appropriate weighting range.

Other contract execution issues to watch out for
The delivered goods are received by a special committee, set up for this purpose. There follow qualitative and quantitative checks and an official inventory is made and signed by the parties. The goods should be delivered within the time designated in the contract, otherwise penalties may be imposed upon the supplier. If it is agreed that the goods should be delivered to the buyer FOB-FOT, the latter chooses the means of transport and bears the respective cost. In all other cases, the supplier chooses the means of transport and bears the risk and the cost, under the following restrictions: (a) no transhipment is allowed without the consent of the buyer and (b) if the transport means is a ship, it should be subject to Classification Clauses. In all cases insurance is Warehouse-To-Warehouse and it covers the CIF price of the goods plus 5%. After loading, the supplier must notify the buyer of all shipping details. If the goods are to be imported, qualitative and qualitative checks can be performed in the country of origin. Payment can be made: a) upon final receipt of the supply, b) with an advance payment of up to 50% and repayment of the remaining amount upon final receipt, or c) according to a deferred settlement. In case of imported products, the seller must submit additional documents in different number of copies, which in general may contain bills of landing, certificates of origin, invoices, packing lists, certificates of qualitative and quantitative checks, receipt inventory, insurance policy (when required) etc.

PUBLIC SERVICE CONTRACTS
What is the relevant legislation?
PD 60/2007 (or PD 59/2007 if the tendering authority is an entity operating in the water, energy, transport or postal services sector) is the main legislative piece. However, Law 3316/2005 has been enacted in order to regulate specifically the award of contracts for designing, supervision and project management of public works (ie services within the scope of Annex IIA cat. 12 of Directive 2004/18/EC), irrespective of the contract value. For all other types of public services with a contract value under the Directive threshold (€ 125.000) articles 79 – 85 of Law 2362/1995 (Code for Public Accounts) apply. The latter are in line with respective European legislation.

What are the peculiarities of the Greek design, study and other engineer services contracts?
A design contract may refer to the execution of a preliminary or a final design. Other engineer services contracts may refer to drafting of tender documents (tender notes, technical specifications etc) and/or contract documents for other design or public works tendering procedures. The Law defines a closed number of design, study or supervision services categories, such as architectural, urban planning, zoning, social, landscaping, energy, geology etc. Each designer should be specialized in one or more categories and his/her specialization is certified by a special design certificate. The design certificates are classified in different classes according to the years of expertise and the type of designs executed in the past. Contract notes referring to design services designate the specific
design categories sought and the eligible design class certificates. Foreign designers should prove designing experience equivalent to the corresponding design category and certificate designated in the contract notice.

What is the award procedure?
A summary of the contract notice is published in the Bulletin and the website of the Technical Chamber of Greece (www.tee.gr) as well as in the press. When the budgeted contract value is above the Directive threshold, a summary of the notice is dispatched to the Publications Office of the European Union. At the beginning of every fiscal year, contracting authorities dispatch a preliminary notice of all contracts they intend to award. The contract notice contains mainly the following: the object of the contract, the type of procedure (open or restricted), the required design category(ies) and the corresponding class certificate(s), the budgeted price, the conditions of participation, the selection criteria, the details of a suitable economic and technical offer, the deadline for execution etc. Negotiated procedures may be followed, if no tenders –or unsuitable tenders– are submitted in an open procedure. Emergency or technical reasons, especially pertaining to the nature of the services may dictate the recourse to a negotiated procedure. Economic operators with a foreign establishment wishing to take part in a tendering procedure are requested to prove their enrollment in a professional or trade register in their State of origin, or to provide a declaration on oath or a certificate as described in the Directives. On the basis of the principle of mutual recognition, they may also be required to prove that they fulfill possible special qualifications set in their State of origin for the provision of the services concerned. More than one economic operators may submit a joint tender. When the contract value is above the Directive threshold a tenderer may rely on the economic, financial or technical capacities of other entities, regardless of the legal nature of the links which it has with them, insofar as it proves to the tendering authority that it will have at its disposal the necessary resources.

What are the award criteria?
A design contract is awarded only to “the most economically advantageous tender”. The latter is assessed on the basis of (a) the offered price, (b) the completeness and soundness of the evaluation of the design object as resulting from the tenderer’s technical report and the various technical merits of his/her offer and (c) the organizational efficiency of the designing group. Other engineer services contracts are similarly awarded only to “the most economically advantageous tender”, which is assessed on the basis of (a) the offered price, (b) the completeness and soundness of the evaluation of the design object as resulting from the tenderer’s technical report and (c) the completeness, efficiency and credibility of the proposed methodology, the staff and the qualifications of the project manager.

Other contract execution issues to watch out for
The contractor submits a performance bond amounting to 5% of the budgeted fees. The Directing Service of the tendering authority manages, monitors and supervises the execution of the contract and ensures compliance with its terms. There are deadlines to be observed by the contractor and penalties to be inflicted if the deadlines are not met. Additional designs or services not included in the original contract may be awarded to the contractor only if they are due to unforeseen circumstances and deemed absolutely necessary for the completion of the project. In such case, an additional contract is signed. Payments to the contractor are made in installments following the completion of the various stages of the design, upon submission of detailed summarizing accounts.
PUBLIC WORKS CONTRACTS

What is the relevant legislation?

PDs 60/2007 and 59/2007 constitute the legal framework for the public works tendering procedures as well. In addition, Law 3669/2008 ("Public Works Construction Code") codifies the main national legislation specifying all issues pertaining to preparation, conclusion, execution, termination or rescission of public works contracts.

What are the peculiarities of the Greek public works tendering procedures?

Construction of public works is based on pre-approved designs, which set all preconditions and technical standards. Therefore, the award criterion is mainly the lowest price. The tendering procedures are: (a) the open procedure (applied in most cases), where all prospective constructors participate, (b) the pre-selection procedure (applicable only on great scale or very specialized projects), where only short-listed constructors participate in the final selection phase, (c) negotiated procedure with one or a closed number of participants (applicable on very exceptional cases defined by law) and (d) summarized tendering or oral bidding (for very small scale projects).

The law provides for different methods of tendering, i.e. different methods of offering a contract price. These are the following: (a) a general discount percentage on the budgeted project price, (b) diversified discounts on budgeted prices for groups of works, (c) price quotation on groups of works, (d) financial offer covering design and build, (e) underbidding on the constructor's profit on cost calculated works, (f) offer based on real estate development, (g) offer based on self-financing and concession, or (h) combination of the above.

Only those registered in the Construction Businesses Registry are eligible to participate in the tender procedure. Members are classified in different classes according to their expertise, financial magnitude, employed personnel, machinery and technical equipment etc. Their class is certified through a special constructor class certificate. Foreign companies should fulfill the registration and other qualifications of their country of origin. Participation eligibility also depends on the budgeted contract value, which is the determining factor for the required constructor class. Foreign undertakings should prove qualifications equivalent to those required by the constructor class sought.

When the contract value exceeds 1,000,000 € (VAT excluded) and the tenderer is a corporation or a public company limited by shares, the shares should in principle be registered. Joint Ventures may participate, their members being jointly and severally liable.

Tenderers are required to prove their suitability in terms of personal and financial status through a number of documents, similar to those referred above in other procurement types of contracts, although the submission of the constructor class certificate is an adequate proof for most of the requirements.

Other contract execution issues to watch out for

Project management, monitoring and supervision is made jointly by the contractor and the Directing Service of the contracting authority. In projects with contract value above 3 MEuro, an independent engineer as technical adviser may be hired.

Up to 30% in value of the project works may be subcontracted to third entities, fulfilling the appropriate qualifications. The subcontractor agreement should be approved by the contracting authority.

The contractor should prepare and submit for approval to the Directing Service a construction time schedule within 15 days from the date of contract conclusion. The time schedule is based on the final deadline and the various intermediate milestones; penalties are imposed if unjustifiably not followed. There is also a provision for works acceleration against a bonus payment.
There is an escalation method applying on the contract price, so that it may not suffer by inflation due to prolonged construction period. Additional or new works can be assigned to the contractor by means of supplementary agreement(s) only under the conditions provided for by EU law. The contract may provide for an advance payment of up to 15%, following the installation of the construction site and the handing over of a same value letter of guarantee. The remainder is paid in installments in accordance with the achievement of the milestones set by the time schedule.

**Concession Contracts**

Public works or services may be executed in the form of concession contracts, where the consideration for the contractor is the concession of the right to exclusively exploit the constructed works or the provided services, together or not with a payment by the contracting authority. PDs 60/2007 and 59/2007 contain a specific set of basic rules governing concession contracts tendering procedures. There exists no unified legislation on concession contracts. Each concession agreement contains its own set of rules and it is accompanied by a number of annexes, usually encompassing Special and Technical Conditions of Contract, Design and Construction Agreement, Environmental Terms, Independent Engineer Agreement, Loan Agreements, Insurance Requirements, Performance Bonds etc. After their conclusion concession agreements are ratified by the parliament in the form of an Act. This practice has been adopted, so that the contract constitute a prevailing lex specialis over ordinary Greek law and also special tax (incentives) provisions be implemented.
What are Public Private Partnership (PPP) Projects?

PPP Projects are written partnership contracts between public and private entities on the performance of projects or the provision of services to the public against a predetermined consideration. Thus, private undertakings may undertake the design, financing, operation, construction maintenance and administration of projects or the provision of services on behalf of the State, through a well defined legal framework which aims at an optimized combination of private and public funds.


What does the term “Public Entities” include?

Pursuant to Article 1 para. 1 L. 3389/2005, the term ‘Public Entities’ includes:

a) the State, b) the Organizations of Regional Administration and the Regional Associations of Municipalities and Communities, c) Public Law Legal Entities and d) Sociétés Anonymes whose total share capital belongs to the entities above under a), b) and c) or to other Société(s) Anonyme(s) falling under this category.

What are the conditions pursuant to which a project may qualify for a PPP?

Articles 1 and 2 of Law 3389/2005 set out the conditions, pursuant to which a project may qualify for a PPP:

a) The project concerns the construction of works or the provision of services which fall within the scope of Public Entities, by virtue of law a contract or their articles of incorporation. Activities that belong exclusively to the State, according to the Constitution, and especially national defense, police surveillance, awarding of justice and execution of judicially imposed penalties constitute the subject-matter of PPPs.

b) The private entities conclude contracts through Special Purpose Sociétés Anonymes (SPVs) that are established by them exclusively for the purposes of the project.

c) The private entities assume the risks associated with the financing, the availability and the construction of the necessary infrastructure or the provision of the services, against a consideration paid in lump sump or in installments, by the Public Entities (availability payments) or the end users of the services (e.g. tolls).

d) The financing of the project is made through resources secured by private entities.

e) The total value of the project does not exceed the amount of EUR 200 million (VAT not included).

However, following a unanimous decision of the Inter-ministerial PPP Committee, it is possible for a project to fall under the provisions of Law 3389/2005, even if one or more of the requirements under c), d) and e) are not fulfilled. Conditions a) and b) however must be always satisfied.

What is the procedure for the submission of a project to the PPP Law?

A special unit for PPPs (PPP Special Secretariat) is established in the Ministry of Finance, Competitiveness and Shipping, with the responsibility to identify projects that can be
delivered via PPP schemes. Any Public Entity that wishes to implement a PPP project submits a proposal to the PPP Special Secretariat outlining the technical, financial and legal aspects of the proposed project. The PPP Special Secretariat evaluates the proposal and, provided that the criteria of the Law 3389/2005 are met, includes it in the “List of Proposed Partnerships”. Such list is a non-binding list with PPP projects provided that they fall under the provisions of Law 3389/2005.

Once the list is finalized, the PPP Special Secretariat invites the Public Entities concerned to file a petition for submission of the project(s) to Law 3389/2005, within an exclusive time-period of two months. The petition is submitted to the Inter-ministerial PPP Committee, which consists of the Minister of Finance, Competitiveness and Shipping, the Minister of Infrastructures, Transport and Networks and the Minister of Environment, Energy and climate Change, as ordinary members, and the Minister(s) who supervise(s) each of the Public Entities which are to participate in the PPP contract or associated contracts, as extraordinary members.

The Inter-ministerial PPP Committee, issues a relevant decision within two months from the receipt of the Public Entity’s petition. If the project is approved, the PPP Special Secretariat assumes the coordination of the assignment procedure through which the private entity will be selected.

What is the procedure for the assignment of a PPP project to a private entity?

Chapter C (articles 7-16) of Law 3389/2005 determines the basic principles (equal treatment, transparency, proportionality, freedom of competition etc), the criteria (criterion of the most beneficial profitable offer from a financial aspect or criterion of the lowest price) and the assignment procedure for the selection of the private entity that will undertake the project. The procedure is briefly the following:

a) The Contracting Authority (Public Entity) calls for tenders determining the scope of the contract, the nature of the assignment procedure (Open Tender, Restricted Tender, Competitive Dialogue or Negotiation), its terms and criteria, as well as the minimum qualifications required from potential bidders. In the restricted tenders, competitive dialogue procedures and negotiations procedures, the Contracting Authority may short-list the bidders.

b) The interested parties submit their offers.

c) The Contracting Authority selects the private entity which will undertake the project on the basis of the criteria provided by Law and the tender documents.

d) Finally, the PPP contract is concluded between the Contracting Authority and the SPV established by the selected private entity for this purpose.

How is the PPP Company (private entity) repaid?

The PPP Company may be repaid either by the Contracting Authority, or by the end users through user charges.

In the first case, the Contracting Authority reimburses the initial investment of the PPP Company through availability payments, pursuant to certain output specifications. In order to be paid in full, the PPP Company must not only construct the project infrastructure, but also undertake the efficient operation, maintenance and management of the project throughout the contractual period. Upon the termination of the contractual period, the infrastructure is transferred to the Public Entity.

In the second case, the initial investment of the PPP Company is reimbursed by the end users through fees (e.g. tolls), once the construction of the project is completed. The payment procedure and the relevant details are determined by a decision of the Inter-ministerial PPP Committee. If the fees paid by the end users are insufficient for the full payment of the PPP Company, the Contracting Authority may make lump sum payments during the construction of the project or availability payments during its operation.
Is there a limit as to the size of the projects to be implemented as PPP?
Greek Law does not provide a minimum amount for the implementation of PPP projects. However, given that every invitation to tender entails certain costs, the State tends to group together similar projects and issue a single invitation to tender for all. Therefore the relevant budget is usually quite high. The maximum budget limit for PPPs is EUR 200 million (not including VAT).

Who undertakes the design of the PPP project?
The main technical specifications of the PPP project are determined by the Contracting Authority, including sometimes any preliminary studies. However, the completion and delivery of the final studies is normally undertaken by the PPP Company.

Can a private entity submit a proposal for a project?
Private entities may submit a proposal for a project to Public Entities. However, only Public Entities are entitled to submit project proposals to the PPP Special Secretariat, either on their own initiative or following a proposal of a private entity. In the latter case, if the project is finally approved for implementation as a PPP, the private entity that proposed it does not automatically assume its performance: it must participate in the tender like any other candidate.

What is the applicable law / dispute resolution?
Article 31 of Law 3389/2005 provides that all disputes arising from the PPP Contracts will be resolved by arbitration and that the applicable law will be Greek.

What are the main advantages of the PPP Framework?
The main advantages of the PPP institutional framework may be summarized as follows:
- The implementation cost of the relevant projects is clearly outlined.
- The implementation and management of the projects by private entities is quicker and more reliable.
- The private entities assume a great part of the risks (constructing, financing etc) that are associated with the implementation and management of the project.
- The experience and know-how of private entities is transferred to the State.
- Private entities (PPP Companies) are offered some important privileges, which are, in brief, the following:
  a) They are exempted from income tax on the accrued interest acquired until the time upon which the exploitation of the project begins.
  b) Any financing contribution paid by the Public Entity (Greek State, Municipalities, public companies etc) is considered a capital subsidy and is VAT exempted, is not subject to income tax and is paid free of any levies in favor of third entities.
  c) The VAT credit balance shall be refunded to the Special Purpose Company according to the relevant provisions of article 34 of the VAT Code. The relevant application for VAT refund may be submitted with the final VAT return for every financial year and the refund of the respective amount shall be effected within 90 days from the submission of the application.
  d) The issuance of the necessary administrative permits is accelerated (exclusive deadline of 60 days from the submission of the file, the lapse of which is equivalent with the granting of the permit). However, in case of archaeological findings, the above 60-days deadline may be extended.
  e) The total cost for the implementation of the project, including the constructing cost, the interest accrued during the period of the construction and any other cost for the supervision, insurance, the fees of counsels, potential technical controls, legal fees, fees for establishment and reestablishment and fees for letters of guarantee, is depreciated at the Special Purpose Company’s choice, either with the straight line method for the whole period of the operation of the project or with the 10 years straight-line method.
with an option to elect within one month from the completion of the project the years of application of the straight-line method.
f) Tax losses of the Special Purpose Company can be carried forward to offset taxable profits of the next 10 subsequent fiscal years.

What are the main differences between PPP projects and concession agreements?

a) All concession agreements are traditionally ratified by law and therefore have to be approved by the parliament. Such ratification is not required with regard to PPP contracts, as Law 3389/2005 i) determines their minimum content, ii) is quite explicit and flexible, thus limiting the need for deviations through parliament ratification and iii) resolves issues which traditionally required special legislative regulations (see Chapters E and F on archaeological findings, environmental protection, issuance of permits etc).
b) The use of an SPV for the project by the successful bidder is a legal requirement under Law 3389/2005, whilst this is not the case in concession contracts, albeit usual in practice.
c) Law 3389/2005 provides that any collateral provided by the SPV for its financing is excluded from the insolvency assets of the SPV and cannot be used for the satisfaction of any other creditor. There is no similar provision in the law for concession contracts.
d) Pursuant to Law 3389/2005, all disputes arising from the execution of the contract are resolved through arbitration. There is no specific provision to that effect in the law of concession agreements and therefore the means of resolution of potential disputes must be resolved on an ad hoc basis. However, in practice, all concession agreements include a detailed arbitration clause.
e) Presumably due to the fact that the legal provisions regarding PPP’s are very detailed, in contrast to the ad hoc solutions provided in concession agreements, experience has shown that during concession projects, legal issues usually arise and that may lead to challenges in court, while PPP projects tend to proceed more smoothly.
What is the applicable legal framework for privatizations?
The applicable legal framework for privatizations is Law 3049/2002 “Privatization of Public companies and other provisions” (Government Gazette A’ 212/10.9.2002) as amended and applies.

What body is competent for privatizations?
The competent body for privatizations is the Inter-Ministerial Committee of Asset Restructuring and Privatizations which is comprised of the Minister of Finance who acts as Chairman, and the Ministers of Development, Competitiveness & Maritime, Environment, Energy & Climate Change, Infrastructure, Transportation, Employment & Social Protection and the Minister supervising the undertaking in question on behalf of the State. A Special Secretariat of Asset Restructuring and Privatizations exists under the ambit of the Ministry of Finance in order to assist the Inter-Ministerial Committee in the performance of its duties.

What undertakings are eligible for privatization?
The undertakings eligible for privatization are state-owned undertakings. State-owned undertakings, for the purpose of privatizations, are those undertakings where the Greek State's stake in the equity exceeds 50% or the company is financed by the Greek State in a percentage that exceeds 50%. Financial institutions with respect to which the Greek State holds an absolutely majority of its share capital are also deemed “public companies” for purposes of privatization. The law for privatization may also be applicable, pursuant to respective decision of the Inter-Ministerial Committee of Privatizations, to subsidiary companies of public companies and other public institutions as well as companies that have been established for the purpose of exploitation of State property which was contributed to said companies or State minority rights in other companies. To this end, according to Law 3986/2011, “Urgent Measures for the application of Mid Term Fiscal Strategy Plan 2012-2015” the company “Hellenic Republic Asset Development Fund SA” has been established. Moreover, according to Law 3985/2011, “Mid Term Fiscal Strategy Plan 2012-2015” the Greek State has published a catalog of the undertakings and assets subject to privatization.

What purpose is served by the company “Hellenic Republic Asset Development Fund SA”?
Pursuant to Law 3986/2011, the object of the company “Hellenic Republic Asset Development Fund SA”, is to exploit the private property of the Greek State and of public entities whose share capital is entirely directly or indirectly owned by the Greek State or Legal Entities of Public Law in a transparent and arms length manner. Such property includes inter alia, ownership of shares of those companies listed Table II, Chapter B, Law 3985/2011 “Mid Term Fiscal Strategy Plan 2012 – 2015”, as well as real estate and property rights, exploitation and management rights, economic interests, intangible assets and operational, maintenance and exploitation rights of infrastructures referenced in the aforementioned Table. The above
assets are transferred to the “Hellenic Republic Asset Development Fund SA” for no consideration. The proceeds from exploitation of such assets must be exclusively applied towards repayment of the public debt of the Greek State.

To this end, pursuant to Decision No 187/16.09.2011 of the Inter-Ministerial Committee for Assets Restructuring and Privatizations and pursuant to the Table II, Chapter B, Law 3985/2011 “Mid Term Fiscal Strategy Plan 2012 – 2015” the following items have been transferred to “Hellenic Republic Asset Development Fund SA” for further exploitation:

a) 9,000,000 shares of the company “Athens International Airport SA” which corresponds to 30% of its share capital.
b) 108,430,304 shares of the company “Hellenic Petroleum SA” which corresponds to 35.477% of its share capital
c) 15,000 shares of the company “Hellinikon SA” which corresponds to 100% of its share capital
d) 7,686,362 shares of the company “General Mining & Metallurgical Company LARKO SA” which corresponds to 55.19% of its share capital
e) The rights of Article 4.2 of the contract dated 31.07.1995 between the Greek State and the companies Hochtief Aktiengesellschaft vorm. Helfamann, ABB Calor Emag Schaltanlagen AG, H. Krantz – TKT GmbH και Flughafen Athen – Spata Projektgesellschaft mbH, for the extension of the contracting period of said contract at a higher limit up to 11.06.2046.
f) The Greek State right to produce, operate, circulate and in general manage the public lottery provided under Law 339/1936, including the Instant Public Lottery provided under Article 17 of Law 1947/1991 for 12 year period, save those rights to said Public Lotteries which have already been assigned to third parties in the context of securitization of claims under Ministerial Decision 2/84003/0049
g) The State’s entitlement to collect duties and revenues due up to 31.12.2027 and which arise from the assignment to third parties of the right to use and commercially exploit radio frequencies for mobile telecommunications services and other services related to mobile telecommunication pursuant to Law 3431/2006, of Regulation of General Licenses of the National Committee for Telecommunications and Postal Services,

Such assets may be exploited by the “Hellenic Republic Asset Development Fund SA” in any suitable manner, and preferably as follows:
(a) sale
(b) establishment of real property rights and inter alia, horizontal and vertical ownership rights
(c) transfer of real property rights on assets
(d) concession of the use or exploitation
(e) assignment of management
(f) contribution of the assets to the equity of societe anonyms and then sale of the shares issued
(g) securitization of claims

What are the forms of privatization?

Pursuant to Law 3049/2002, privatization may occur, indicatively, as follows:
(a) the sale of all or part of the enterprise, its assets or divisions of the enterprise
(b) public offering of the enterprise in the Stock Market or other organized market
(c) the sale of all or part of the shares of the enterprise, with or without a concurrent shareholder agreement, as well as the further transfer of shares in the enterprise and necessary preliminary actions to effect such sale including particularly the process to establish the enterprise, its reorganization or restructuring
The above referenced shareholder agreements may provide that the majority share-
holder is required to elect parties designated by the minority shareholder to the Board
of Directors or those minority shareholders may appoint up to 1/3 of the members of
the Board pursuant to respective provisions of the Articles of Incorporation
(d) grant of licenses or permits to exploit undertakings
(e) formation of companies or participation in companies by the contribution of cash, fixed
assets, divisions, rights and shares
(f) Leasing, of any type, of enterprises in its entirety, or assets, or rights or parts or divisions
thereof
(g) The assignment of the management of enterprises to third parties
(h) The exchange of shares, etc
Privatization may be effected in one or more of the above manners.

What are the privatization procedures?
The Inter-Ministerial Committee of Asset Restructuring and Privatizations sets out the pol-
icy that will apply for privatization of state undertakings and by its decisions, determines
the manner of privatization, the extent and procedure as well as the criteria that will apply
for the evaluation of tenders. Usually, the Hellenic Republic will engage legal and financial
advisors, following a tender, to assist it in the privatization process. The advisors together
with Hellenic Republic draw up the most appropriate procedure for each privatization. The
advisors of the Hellenic Republic, or in the absence thereof the Special Secretariat for Asset
Restructuring and Privatization, drafts and submits a report to the Inter-Ministerial Com-
mittee, accompanied by an analytical timetable for the privatization.
The Inter-Ministerial Committee may also decide that privatization shall occur through a
negotiation procedure with interested investors. The vendor, the State or the advisor of the
State may invite all interested investors to tender, stipulating in its corresponding invitation
to tender the procedure, deadlines, bid content, conditions for bid submission and letters
of guarantee (if deemed necessary).
Usually the tender procedure is performed in two phases. During the first phase, an Invita-
tion for the Expression of Interest is published in the foreign and local press setting out the
specific professional, financial and technical qualifications required investors to be eligible
to participate in the tender. Interested investors file an expression of interest together with
the supporting documentation set out in the Invitation for the Expression of Interest that
substantiates the Investor’s technical, financial and legal status. Eligible investors selected
to participate in the second phase are invited to execute a Non Disclosure Agreement prior
to entering the second phase. In the second phase, the preselected investors are invited
to submit binding bid proposals after performing due diligence and commenting on the
draft contracts that have been previously prepared by Hellenic Republic and its advisors.

How are tenders evaluated?
The contract is awarded to the most advantageous, overall tender. The evaluation criteria
which are taken into account and assessed in order to select the most advantageous
tender, are especially the experience of the bidder in the undertaking’s activity, the bid-
der’s solvency and its ability to complete the transaction, the price offered, the quality
of the investment project, as well as its size and form and finally job maintenance or the
creation of new employment opportunities within the enterprise subject to privatization.
Interested investors are made aware of the applicable criteria prior to submission of their
binding bid offers.
Does a special privatization regime apply to State entities that are of a general interest and utilities?

Pursuant to Law 3049/2002, by Joint Ministerial Decisions, the Ministers of Finance, Development, Competitiveness and Maritime and the Minister supervising the undertaking in question on behalf of the State a) stipulate those State entities of general interest and utilities under privatization related to defense, the nation’s security, public health, energy, transportation and communication, safeguarding the proper operation of markets, exploitation of state natural resources for which State consent is necessary in order for strategic decisions to be validly taken, b) describe the protected good and detail the strategic decisions for which State consent is necessary and c) determine the conditions under which the State’s consent shall be granted. These decisions must be taken in accordance to clear and objective criteria designed to fulfill the intended objective and which shall be appropriate and implemented without distinctions. The above Joint Ministerial Decisions may also provide that the State shall keep a number of shares (golden shares) which embody privileges such as veto rights with respect to strategic decisions.

In practice, it should be noted that such rights or privileges are set out expressly either in the undertaking’s Articles of Incorporation or provided for in special laws.

Does a special tax regime apply for privatizations?

Contracts and/or any acts concluded for the purpose of privatization under Law 3049/2002, including mergers, scissions, dissolution of enterprises, the corresponding transfer of real estate, movable assets, shares or any kind of rights, contribution of property, movable assets, real estate, divisions and business sectors, registration of real property rights including mortgages, liens and pledges are exempt from tax, including tax on capital gains, duties, stamp duties, contributions, rights or any other burden in favor of the Greek State or third parties.
BACKGROUND

Greece has developed a financial and capital markets legal/regulatory framework which conforms to international and European standards and facilitates the use of all the capital raising techniques commonly applied in the international financial markets. At the heart of such development are Greece’s adoption of EU laws and the extensive reform of domestic legislation throughout the past decade, which brought the Greek ABS market into line with other civil law European jurisdictions.

In this context, Greek law expressly provides for and promotes the use of modern securitization (asset-backed) structures for the purposes of funding and enhancing the liquidity of private sector entities, involving bonds issued under articles 10 and 11 of Law 3156 (the Securitisation Law) and covered bonds issued by banks under article 91 of Law 3601/2007.

The focus of this report will be the main Securitisation Law provisions that achieve a flexible and - at the same time - robust legal, regulatory and tax framework for the issuance of asset-backed securities, with a brief note on Covered Bonds.

SECURITISATION LAW

What are the main Securitisation categories under Greek law?

Trade Receivables

The Securitisation Law defines “securitisation of claims” as the transfer by way of sale of trade receivables from a transferor company (Originator) to a transferee company combined with the issuance and distribution through a private placement (only) of bonds by such transferee (Issuer). The repayment of the bonds is funded by (a) the income collected from the purchased trade receivables; or (b) loans, credit agreements or financial derivatives that the Issuer enters into. The bonds can be offered in Greece or abroad, whereas “private placement” is defined as distribution of the bonds to a limited circle of investors and up to a maximum of 150 persons.

Real Estate Assets

Similarly, “securitisation of real estate claims” is defined as the transfer by way of sale of real property from a transferor (Originator) to a transferee company (Issuer) combined with the issuance and distribution through a private placement (only) of bonds by such Issuer. The repayment of the bonds is funded by (a) the income and revenues collected from the operation or sale of such real property; or (b) loans, credit agreements and financial derivatives entered into by the Issuer.
**What types of receivables may be securitised?**

There is no restriction as to the type of trade receivables that are eligible for transfer under a securitisation. Such receivables may be any kind of claims for payment against any third party arising in the course of the business of the Originator, whether conditional, existing or future, provided that the latter are defined or definable; including among others any receivables by consumers, claims from services, loans and other banking products, consumable and pharmaceutical receivables of suppliers against public and private entities etc. Recently, the main types of receivables have been consumer and business loans. Additional purchase of receivables may also be permitted. In relation to Real Estate Securitisation, any receivables from the management of or accruing from the securitised real property can be securitised. All collateral rights securing the securitised receivables (e.g. personal and proprietary security like guarantees, mortgages and pledges) are also transferred to the Issuer upon perfection (registration) of the receivables purchase agreement. Moreover, other rights related to the transferred receivables (e.g. to terminate, amend or create unilaterally a legal relationship under a contract) may also be transferred.

**Which entities may qualify as Originators?**

The Originator/transferor of the securitised receivables can only be a “merchant” that has its principal place of business or residence in Greece or abroad, provided that it has a place of business in Greece. The notion of “merchant” under Greek law broadly includes all undertakings pursuing commercial activity and includes banks, which are the most common originators in Greek securitisations. Especially for Real Estate Assets Securitisation, the Originator can only be the Greek State, a Greek public enterprise (i.e. a State-owned company), a bank, an insurance company or any other company that is either 100% owed by such abovementioned entities or is listed in the Athens Exchange and its total assets exceed EUR350,000,000.

**What is a securitisation SPV?**

Following the example of, among others, France, Italy and Spain, Securitisation Law introduced the concept of a special purpose securitisation vehicle, i.e. an entity established solely for the purpose of securitising assets (SPV) to act as the exclusive transferee of the securitised assets and issuer of the asset-backed bonds. Such SPV may (but is not required to) be set up in Greece; although, especially for Real Estate Assets Securitisations the SPV is expressly required to be set up in Greece. Where SPVs are set up in Greece, they have to take the form of a company limited by shares (Greek société anonyme) and are primarily governed by the special provisions set out in the Securitisation Law taking precedence over the rules of general Greek company law. In any case, SPVs must have registered shares; i.e. not issued to the bearer.

**How are the securitised assets transferred?**

The legal mechanism for the transfer of the receivables set in the Securitisation Law provides that transfers are effected by way of sale under the relevant Greek law rules (articles 513 et seq. and 455 et seq. of the Greek Civil Code), to the extent these do not conflict with the special Securitisation Law rules. The assets purchase agreement must be in writing and also include a statement that the sole purpose of the transfer is the securitisation transaction and a specification of the maximum amount of the receivables.
transferred or to be transferred. The transfer of the securitized assets is completed upon the completion of the perfection requirements (see below).

**How is the “true sale” character of the transaction ensured?**

The recognition of the need for “true sale” structures is apparent since a major objective of the Securitisation Law is to ensure the absolute disposition of the transferor’s title and interest in the securitised assets in a way that would be consistent with the nature of sale.

Hence, the Law itself expressly stipulates that the transfer of the securitised assets shall constitute an outright sale, that a fiduciary transfer of receivables is not permitted and that any conditional/fiduciary term to the contrary is not valid. It is permitted to adjust or defer the purchase price and to rescind the purchase agreement according to its terms and the general civil law rules, as well as to enter into a subsequent agreement for the re-purchase of the receivables.

**Which are the perfection requirements for the transfer?**

The provisions relating to perfection requirements are of particular importance for the securitisation Greek legal framework. Perfection of the securitised assets transfer is effected by registration in the public registry set up under Law 2844/2000 of a summary of the assets purchase agreement which includes its major provisions (Registration).

Although the Securitisation Law mentions that the transfer must be notified by the SPV or the Originator to the debtors, said Law also expressly provides that notification is deemed to have occurred with the Registration; thereby successfully addressing the usual issues raised by the general assignment rules in relation to notification. In Real Estate Securitisations, the transferor must also register the real property transfer to the Land Registry and notify in writing the tenants and any other person that is contractually related to the owner of the property.

**What is the effect of registration?**

Upon Registration (or such later date as specified in the sale and transfer agreement) the transfer is valid and effective against all parties, notwithstanding any contractual agreement between the seller/Originator and the debtor of the receivables prohibiting or restricting such transfer.

Furthermore, on registration, all registrable and registered security interests accessory to the receivables, such as mortgages, can be transferred to the SPV.

**What are the qualifications and role of the servicer?**

The administration/collection of the receivables may be delegated by the SPV to the Originator or a credit or financial institution providing services within the EEA (Servicer), provided that the servicing agreement is executed in writing and appropriately registered in the public registry of Law 2844/2000. In case the debtors are consumers and the SPV is non-Greek, the Servicer must be established in Greece. The Servicer deposits all moneys collected from the securitised assets in an interest-bearing bank account (Servicing Account) kept either with itself or with a credit institution with operations within the EEA.

**How is the security of the creditors and the segregation of the assets achieved?**

Pursuant to the Securitisation Law protection provisions:
- The Servicing Account where the collected monies are deposited is segregated from the Servicer’s and the deposit bank’s property (if the Servicer is not a bank).
- All collected monies, any assets or securities delivered to the Servicer as collateral for the benefit of the bondholders are not subject to seizure or attachment or set-off rights for counterclaims or restriction by itself or its creditors and do form part of its insolvency estate.
- Upon Registration the holders of the asset-backed bonds and other securitisation creditors, such as swap counter-parties, liquidity providers etc. (the securitisation creditors) acquire a statutory security interest over the receivables and the Servicing Account, securing full payment and discharge of any claims relating to the bonds and the SPV’s operational expenses and other obligations. Such claims rank ahead of any statutory preferential creditors, including tax authorities.
- No other pledge or encumbrance may be effected on the securitised assets, until the security is released. Security.
- Similarly, no further transfer, usufruct or security is permitted on the securitised real property, unless it is in compliance with the terms of the original asset purchase agreement.

**Can the initiation of insolvency proceedings affect the transfer of the assets?**

The Securitisation Law explicitly provides that upon Registration the transfer of the securitised assets cannot be challenged by any insolvency proceedings of the Originator, the SPV, any security provider or the Servicer. This protection holds true also for all future claims even if these came to existence after the initiation of the relevant proceedings.

**Are there any exemptions from data protection/confidentiality rules?**

The Securitisation Law provides for exemptions from banking confidentiality and data protection laws to allow for the assets to be transferred free of any requirements to obtain the consent of the debtors or the Data Protection Authority. For the purposes of the securitisation only, the general duty of bank confidentiality does not apply between the Originator and the SPV or the SPV and its creditors.

**Are there any special taxation provisions in relation to securitisations?**

Finally, the Securitisation Law includes significant provisions aiming at tax efficiency. Among others, the Law provides that:
- the transfer and collection of the receivables, as well as the loans, credit agreements and the financial derivatives that the SPV enters into;
- the transfer of real property to and from the SPV and its re-transfer to the transferor/originator; and
- the profits realised from the transfer of receivables, the execution of loans, credit agreements and financial derivatives, any collateral agreements or, under certain conditions, real property, are exempted from any direct or indirect tax, duty, contribution, levy, right or other encumbrance, subject only to any applicable VAT or withholding tax and any charges that may be payable to the securities depositary of the Athens Exchange.
The registrations required are subject to minimal fixed registration duties. Notarial fees and duties in connection with the notarisation of any document or agreement in the context of the securitisation are capped.

COVERED BONDS ISSUES BY GREEK BANKS

What are “covered bonds” under Greek law?
As already mentioned “Covered Bonds” is a particular category of bonds, which is the subject of a special legal and regulatory framework, the provisions of Securitisation Law being supplementary only. In particular, said special framework allows banks to issue (directly or through a special purpose vehicle) covered bonds with preferential rights in favour of their holders thereof and certain other creditors over a cover pool comprised by certain eligible assets.

Legal framework
The legal basis for Covered Bond issues is art. 91 of Law 3601/2007, as in force (the Covered Bonds Law). Pursuant to such Law, secondary legislation has been enacted to set out the regulatory framework regulate with respect to the issuance of covered bonds, notably Bank of Greece Act nr. 2620/28.8.2009 (the Secondary Legislation). Although the Covered Bonds Law is supplemented by the Securitisation Law, it includes significant deviations from it. Moreover, the Covered Bond Law supersedes general provisions of law contained in the Civil Code, the Code of Civil Procedure and the Bankruptcy Code. The Greek Covered Bonds laws and regulations have been enacted, with a view, inter alia, to complying with the standards of article 22(4) of Directive 85/611/EEC, so that covered bonds fulfilling the specified criteria could have the benefits of the relevant credit risk weightings rules.

Which are the structures of Covered Bond issues?
The Covered Bonds Law provides for the following types of issue:

- Direct issue: the bonds are issued by a bank and:
  - either the segregation of the cover pool is effected by a statutory pledge over the cover pool assets; or
  - the covered bonds are issued by the bank and are guaranteed by a special purpose vehicle (SPV), which acquires the assets cover pool.

- Indirect issue: the bonds are issued by an SPV being a subsidiary of a bank, which acquires the cover pool assets from the said bank and are guaranteed by the same bank.

Which are the main features of Greek Covered Bonds issues?
A basic overview of the main Greek Covered Bonds legal and regulatory provisions could be as follows:

- Placement. Unlike the Securitization Law, Covered Bonds Law provides that Covered Bonds can also be offered to the public and/or listed to regulated markets.

- Trustee. The Bondholders’ Representative (also referred to as “Trustee” in the Covered Bonds Law) may be a bank or a subsidiary company of a bank passported for services in the EEA and, in contrast to the Securitisation Law, the said
Representative will only be liable towards bondholders for wilful misconduct and gross negligence, unless otherwise provided in the bond terms.

- **Cover Pool.** The assets included in the cover pool may be receivables from loans, credit facilities and (supplementary) from financial derivative instruments, deposits with credit institutions and securities, as specified by the Bank of Greece. In the Secondary Legislation, the Bank of Greece has defined the cover pool eligible assets, set out requirements as to their substitution and replacement by other eligible assets, the ratio of the collateral assets to the value of the covered bond issued, the Loan to Value ratio for certain assets, etc.

- **Registration.** Claims included in the cover pool are set out by the Issuer and the Trustee and registered in a summary form with the public registry of Law 2844/2000. The form of the Registration form is defined by Ministerial Decree.

- **Statutory Security.** Bondholders and certain other creditors named as secured creditors in the terms of the bonds (e.g. the Trustee, the Servicer and financial derivatives counterparties) are secured by a statutory proprietary security interest over the cover pool.

- **Protection.** In all other respects, the Covered Bonds Law protects the bondholders and other transaction creditors by introducing various provisions analogous to those of the Securitisation Law with respect to preferential treatment in case of attachment of insolvency, ensuring attachment and/or bankruptcy remoteness of the assets in the cover pool and the servicing account.
What principles govern the award of public contracts?

When awarding public contracts, contracting authorities must ensure open and effective competition between economic operators. Presidential Decrees 59/2007 and 60/2007, implementing in Greece the EU Public Procurement Directives (i.e., Directive 2004/17/EC on contracts with entities operating in the “special sectors” of water, energy, transport and postal services and the so-called “traditional Directive 2004/18/EC for works, supply and service contracts in the public sector, respectively), aim to ensure that the award of public contracts is subject to the principles of the internal market and, in particular, of freedom of movement of goods, freedom of establishment and freedom to provide services as well as the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

How is competition between economic operators ensured?

The aim of the EU and the corresponding national public procurement rules is to ensure that the relevant public purchasing contracts are open to competition for suppliers across the internal market. To safeguard genuine competition between tenderers, the law expressly states that contracting authorities must treat economic operators equally and non-discriminatorily and that they must, also, act in a transparent manner. By applying these principles, public authorities can obtain products and services of the highest available quality at the best price under keener competition. Giving preference to the best-performing undertaking across the European market also encourages the competitiveness of European firms and motivates them to step up their size and develop their outlets.

How is equality ensured?

The procurement procedures put in place must ensure the fair treatment of any economic operator who wishes to take part in a public tender. Tenderers must be in a position of equality both when they formulate their tenders and when those tenders are being assessed by the adjudicating authority (Case C-19/00 SIAC Construction [2001] ECR I-7725, paragraph 34). The prohibition of discrimination means that a contracting authority cannot organize a tendering procedure in such a way that contractors from Member States other than that in which the contracts are awarded are discouraged from tendering (Case C-16/98 Commission v. France [2000] ECR I-8315 paragraph 108).

How is transparency ensured?

Transparency is intended to preclude any risk of favoritism or arbitrariness by contracting authorities. Transparency implies that all the conditions and detailed rules
of the award procedure must be drawn up in a clear, precise and unequivocal manner in the notice or contract documents (Case C-496/99P Commission v. Succhi di Frutta [2004] ECR I-3801, paragraph 111). Transparency is ensured mostly through the rules on publicity governing public procurement procedures.

Can tenderers deviate from the tender conditions?
All tenders must comply with the tender conditions so as to ensure their objective comparison; otherwise, if tenderers were allowed to depart from the basic terms of the tender conditions by means of reservations, the requirement of equal treatment of bidders would not be complied with (Case C-243/89 Commission v. Denmark [1993] ECR I-3353, paragraphs 37 & 40).
Even in the context of negotiated procedures, where contracting authorities have a certain margin of discretion, they are always bound to ensure observance of the terms and conditions of the tender specifications, which they have freely chosen to make mandatory (Case T-40/01 Scan Office Design v. Commission [2002] ECR II-5043, paragraph 76).

Can contracting authorities accept amendments to the offers submitted by only one tenderer?
No. When a contracting authority takes into account an amendment to the initial tenders of only one tenderer, it is clear that this tenderer enjoys an advantage over his competitors, which breaches equal treatment and impairs the transparency of the procedure (Case C-87/94 Commission v. Belgium [1996] ECR I-2043, paragraph 56).

Can variants be submitted?
When the criterion for award of a tender is that of the most economically advantageous offer (see below), contracting authorities may authorize tenderers to submit variants, provided this is indicated in the contract notice. In order to ensure that a contract is awarded on the basis of criteria known to all tenderers before preparation of their tender, a contracting authority can take account of variants as award criteria only in so far as it expressly mentioned them as such in the contract notice (Case C-87/94 Commission v. Belgium [1996] ECR I-2043, paragraph 89).

How should technical specifications be drawn up?
Aiming to open up public procurement within the EU to competition, the technical specifications must be clearly indicated so that all tenderers know what the requirements established by the contracting authority cover and that it must be possible to draw up technical specifications in terms of functional performance and requirements and, where reference is made to the European standard or, in the absence thereof, to the national standards, tenders based on equivalent arrangements must be considered by the contracting authorities.

Can different companies of the same group participate in the same tender?
No. In order to prevent the risk of conflict of interest or of distorted competition between tenderers, entities within the same legal group may not participate in the same call for tenders, for example as members of consortia. A company cannot participate in the
same procedure both individually and as member of a bidding consortium. This would impair healthy competition and equal treatment of tenderers (Decision No. 429/2008, Council of State’s Suspensions’ Committee).

**Can contracting authorities limit the number of suitable candidates?**

Yes. The number of candidates in restricted and negotiated procedures with publication of a contract notice and in the competitive dialogue may be limited on the basis of objective and non-discriminatory criteria indicated in the contract notice (no weightings being required), provided a sufficient number of suitable candidates is available. In restricted procedures, the minimum is five; in negotiated procedures with publication of a contract notice and in the competitive dialogue, the minimum is three.

**What happens if the number of candidates meeting the selection criteria is below the minimum number set in the contract notice?**

The contracting authority may continue the procedure by inviting the candidates with the required capabilities. It may not, however, include in the same procedure other economic operators who did not request to participate or candidates failing to meet the required capabilities.

**What happens if there is only one suitable candidate?**

A contracting authority is not required to award a contract to the only tenderer judged to be suitable (Case C-27/1998 Fracasso and Leitschutz [1999] ECR I-5697, paragraph 34). A contracting authority may, on occasion, on grounds of public interest, cancel a procedure and decline to award a contract where only one tender has been submitted or survived the preliminary stage, provided that the action taken is not arbitrary or unfair and does not involve any infringement of the Public Procurement Directives or other provisions or principles of EU law (Opinion of Mr. Advocate General Saggio on Case C-27/1998, paragraph 18).

**When tenders must be opened?**

To safeguard equality, contracting authorities must both set a final date for receipt of tenders, so that all tenderers have the same period after publication of the tender notice within which to prepare their tenders, and set the date, hour and place of opening tenders so that the terms of all tenders submitted are revealed at the same time (Case C-87/94 Commission v. Belgium [1996] ECR I-2043, paragraph 55).

**What are the tender award criteria?**

Contracts are awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition. A choice exists between the lowest price and the most economically advantageous offer (a criterion containing several elements such as quality, price, technical merits, environmental elements, time limit on delivery, profitability etc.). Contracting authorities must specify in the contract notice or the contract documents, or, in case of competitive dialogue, the descriptive documents, the relative weighting which they give to each of
the criteria chosen to determine the most economically advantageous offer. If this is not feasible, they must indicate the criteria in descending order of importance.

What are the rules on publicity in public procurement procedures?
Throughout public procurement procedures, public contracts, whose value exceeds the thresholds stated in the national legislation transposing in Greece the provisions of the EU Public Procurement Directives, are subject to obligations regarding information and transparency. This takes the form of publishing information notices drawn up in accordance with standard Commission forms. In fact, effective competition also requires that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community. Notices must contain adequate information on the object of the contract and the conditions attached thereto in order to enable economic operators in the Community to determine whether the proposed contracts are of interest to them. For this purpose, the European Commission has drawn up and published standard contract notice forms as well as the Common Procurement Vocabulary (CPV) as the reference nomenclature for public contracts.

What types of notices exist?
There are several types:
(i) The prior information notice (not compulsory unless the contracting authority wishes to reduce the time limits for the receipt of tenders) concerning the estimated total value of works, supplies or services contracts which contracting authorities intend to award over the following 12 months’ period.
(ii) The notice of the publication of a prior information notice where the prior information notice is only published on the website (“buyer profile”) of the contracting authority (not compulsory).
(iii) The contract notice or notice of a design contest (compulsory). The contracting authority may publish this notice itself nationally and should send it to the Publications Office. Publication by the Publications Office is free. The notice is published in Greek and a summary is translated into the other official languages.
(iv) The contract award notice and notice of the results of a design contest (compulsory).

What information must a contracting authority give to candidates and tenderers?
Each contracting authority shall, upon request, provide in writing information, as soon as possible, to candidates and tenderers on the decisions reached concerning the award of a contract, including grounds for not awarding it or for recommencing the procedure or implementing a dynamic purchasing system (that is, an electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, limited in duration and open, throughout its validity, to any economic operator satisfying the selection criteria and having submitted an indicative tender complying with the specification). Also, on request from the economic operator concerned, contracting authorities must, as soon as possible, inform:

- Any unsuccessful candidate or tenderer of the reasons for rejecting his application or tender.
Any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the economic operator chosen.

What rules apply to communication with candidates and tenderers?
The exchange and storage of information must ensure the integrity and confidentiality of the data. The contracting authority only examines the content of the tenders after the time limit set for submitting them has expired. Use of electronic means, which helps speed up procedures, must be non-discriminatory. Devices for the electronic receipt of tenders permit the use of electronic signatures, guarantee the authenticity, integrity and confidentiality of the data and are capable of detecting possible fraud.

What are the time limits for receipt of requests to participate and for receipt of tenders by contracting authorities?
To allow the parties sufficient time to draw up their tenders and depending on the complexity of the contract, the minimum statutory time limits to receive requests to participate and tenders are as follows:

- In open procedures, 52 days from the date on which the contract notice was sent, for the receipt of tenders (if a prior information notice has been published, this deadline may be shortened to 36 days but, in no case, to less than 22 days).
- In restricted procedures, negotiated procedures with publication of a contract notice and in the case of competitive dialogue, 37 days from the date on which the contract notice was sent, for the receipt of requests to participate and, in restricted procedures, 40 days from the date on which the invitation was sent for the receipt of tenders (if a prior information notice has been published, this deadline may be shortened to 36 days but, in no case, to less than 22 days).
- The above deadlines may be shortened where electronic means are used and, in case of restricted procedures or negotiated procedures with publication of a contract notice, for urgency reasons.

What is the role of the Uniform Independent Public Contracts’ Authority (the “Authority”)?
The Authority was set up by Law 4013/2011, published in the Official Government Gazette on 15.09.2011, as operationally independent, administratively and financially autonomous and not being subject to government control or supervision. It is entrusted with the supervision and coordination of central government bodies in the field of public contracts (irrespective of their value). Essentially, it will supervise and ensure legitimacy in the observance and implementation of the legal framework for public contracts by all public bodies. The Ministerial Decision appointing the Authority’s members must be issued within three months from the Law’s entry into force on 15.09.2011 and the Authority must start operating by 01.01.2012.

What conduct by tenderers is prohibited?
Tenderers must freely compete so that the best firm for the job may win. Bid rigging is, therefore, prohibited.
What is bid rigging?

Bid rigging is a form of collusion between competitors and could involve bid rotation (where bidders take turns being the designated successful bidder), complementary or cover or courtesy bidding (where some of the bidders bid an amount knowing that it is too high or contains conditions that they know to be unacceptable to the agency calling for the bids), bid suppression (where some of the competitors agree not to submit a bid so that another conspirator can successfully win the contract) or subcontract bid-rigging (where some of the competitors agree not to submit bids, or to submit cover bids that are intended not to be successful, on condition that some parts of the successful bidder’s contract will be subcontracted to them in order to “share the spoils” among themselves).

Is bid rigging permitted?

No. Bid rigging amounts to a horizontal hard-core restriction of competition resulting in price fixing and market sharing between tenderers. It is heavily penalized under the antitrust legislation (i.e., Law 3959/2011, as in force). Penalties include the imposition by the Competition Commission of administrative fines on the entities concerned (of up to 10% of their total turnover) and of a fine ranging from €200.000 to €2 million on their legal representatives and the persons involved in implementing the bid rigging arrangement. These persons may also be criminally sanctioned by a fine ranging from €100.000 to €1 million and with at least two years’ imprisonment.
Who does the term parties refer to herein?

The term parties refers to economic operators, who are interested in participating in a call for tenders for the award of a public contract, are candidates in an awarding procedure, or after the public contract has been awarded, are objecting such award.

Is Greece as an EU Member State in line with the EU rules relating to the petition of review procedures in the award of public law contracts?


Which contracts does L. 3886/2010 cover?

L. 3886/2010 covers all public contracts falling within the scope of Directives 2004/17/EC and 2004/18/EC. The Law also covers public work concession contracts, framework agreements as well as dynamic purchasing agreements.

Under which provisions are parties protected in cases of contracts not falling within the scope of L. 3886/2010?

In the cases of public supply contracts Presidential Decree 118/2007 shall apply, in the cases of public work contracts L. 3669/2008 shall apply and in the cases of design contracts, the provisions of L. 3316/2005 shall be applicable. There are also several private entities of the public sector, which have their own contract awarding regulations.

It is to be noted that recent L. 4013/2011 provides the establishment of an independent authority, the task of which among others will be the coordination of the awarding procedures and of the performance of public contacts falling within the scope of Directives 2004/17/EC and 2004/18/EC, the frame agreements, the work concession contacts as well as the dynamic purchasing systems.

Which are the legal proceedings provided for in L. 3886/2010?

The Law provides for the following legal proceedings:

a) the “prejudicial” recourse for review (“recourse for review”) before the awarding authority (“the authority”) against any enforceable act of the authority relating to the awarding procedure starting from the publication of the call for tenders until the conclusion of the contract;

b) the filing before the President of the Administrative Court of Appeals (“the judge”) competent in the area of the seat of the authority of a petition seeking interim measures;

c) the filing before the Administrative Court of Appeals competent in the area where the seat of the authority is located (“the Court”), of a request for annulment against any act or omission of the authority violating the EU law, the internal law or the tender documents;
d) the filing before the Court of a request for annulment of the contract already concluded; and
e) the filing before the either Administrative Court of Appeals or Civil First Instance Court, competent in the area where the seat of the authority is located, depending on whether the authority is a public authority or entity or a private entity of the public sector, of a lawsuit for damages suffered by a party from any act or omission of the authority during the awarding procedure or from the conclusion of the contract.

By exception, the Council of State (i.e. the Supreme Administrative Court) shall be competent for disputes concerning i) work or service concession contracts, ii) contracts falling within the scope of Directive 2004/17/EC, and iii) contracts the estimated value of which is above 15,000,000.00 euro including VAT.

Which acts of the authority may be challenged?

Any act or omission of the authority which is enforceable and is deemed to infringe the EU or internal laws or the tender documents may be challenged.

Upon the conclusion of the contract, this may be challenged only on the grounds specifically provided by law 3886/2010.

Who is entitled to challenge an act or omission of the authority during the awarding procedure?

On the condition that the applicant may claim that he is suffering damage:

- The tender documents may be challenged by any person interested in participating in the awarding procedure for being the contractor, on the grounds that one or more terms of the call for tenders or other tender documents prohibit it from participating in the procedure, and such terms are in breach either of the EU or the Greek law.
- During the awarding procedure acts or omissions of the authority may be challenged by any candidate; the grounds may be that their interests are being harmed, for example in cases when its bid is rejected or its technical or economic offer should not have been rated lower than others.
- After the conclusion of the contract, this may be challenged as being null and void by any one that was interested in being awarded the contract and only in the specific cases provided for in L. 3886/2010.
- If the applicant is a consortium the recourse for review, as well as any other legal proceedings may be filed only by the consortium.

How is recourse for review filed?

Recourse for review is filed before the authority and it may be signed either by an attorney or by the representative of the applicant. It may be submitted even by fax, in which case the document bearing the original signature of the signatory must be submitted to the authority within five days. Applicants may file only one recourse for review against the same act or omission. The recourse for review cannot be filed against the decision of the authority that admits the recourse of a third party. Such decision may only be challenged through a petition seeking interim measures.

The recourse must be notified by the applicant to anyone who could suffer a prejudice in case the recourse is admitted. If the recourse is not notified, the petition for interim measures is not rejected in case the recourse for review has been dismissed.
The authority must either admit or reject the recourse for review within the time limit set out by the Law. If the authority does not issue a decision within this time limit, the recourse is considered as being rejected.

**Can the contract be concluded during the time limits provided for challenging the awarding decision of the authority?**

During this period the authority cannot proceed to the conclusion of the contract under penalty of nullity of the relevant decision (“standstill period”).

L. 3886/2010 provides the following standstill periods:

1. the time limit for the filing the recourse for review against the awarding decision, which is ten days;
2. the time limit for the decision on the recourse to be issued, which is fifteen days;
3. the time limit for the filing of a petition seeking interim measures against the decision on the recourse for review, which is fifteen days. Same time limit applies following the silent rejection of the recourse;
4. the time after the hearing of the petition for interim measures, until the issue of the decision by the Court; this standstill period may be lifted according to an injunction issued by the judge of the interim measures. The injunction may, among others, allow the conclusion of the contract, particularly if the petition is obviously inadmissible or unfounded in substance. There is no standstill period in connection with other acts or omissions that may be challenged, for example during the awarding procedure.

**How is the petition for interim measures filed and heard?**

The petition for interim measures is filed with the judge as defined above. Copy thereof must be served upon the authority and the parties to be indicated by the judge. Should the authority be different from the agency that receives the tender offers, the petition is to be served upon it. Anyone who has an interest in the interim measures not to be granted may file an intervention which is heard together with the petition for interim measures. All supporting documents must be submitted to the Court at the latest until the hearing of the petition.

The judge, following prior invitation of the authority, can issue an injunction for appropriate measures (e.g. suspension of the act or of the progress of the awarding procedure) until the hearing of the petition. Save what is said above with regard to the standstill period, such injunction is not required when the conclusion of the contract is challenged during the relevant standstill period. On the other hand, the injunction can be revoked following a request of the authority and after prior invitation of the applicant.

The prior filing of the main proceedings, i.e. the request for annulment, against the act or omission that the petition for interim measures is challenging, is not necessary for the validity of the petition for interim measures.

**What should be the grounds of the petition for interim measures?**

The petition for interim measures, under penalty of rejection, must be based on the same grounds as those of the recourse for review.

**What happens when the petition for interim measures is admitted?**

The Court accepts the petition for interim measures, unless it deems that imperative reasons for the protection of the public interest must prevail over the interest of the applicant, in which case the petition is rejected.

If the petition is admitted, the Court decision among other appropriate measures mainly orders:

1. the suspension of the call for tenders or of any document relating to the award
procedure, ii) the suspension of the enforcement of any act or omission of the authority, iii) the prohibition of any legal or material action by the authority, iv) the performance of any action that is deemed necessary, e.g. documents or other data to be conserved, v) the suspension of the conclusion of the contract.

The applicant must file the main proceedings within the time limit set out by the law otherwise the enforcement of the decision ordering interim measures is ipso facto lifted. On the other hand, the authority may either recall or amend its act or proceed with the omitted act in conformity with the decision. In this cases the main proceedings, if already filed, are in principle abrogated.

What happens when the petition for interim measures is rejected?

The applicant is not deprived from filing any other appropriate proceedings against the act or omission challenged through the petition for interim measures. Such proceedings are the request for annulment of the infringing act or omission and the lawsuit for damages, the latter on the condition that the request for annulment has previously been admitted. The request for annulment shall not necessarily be founded on the grounds included in the petition for interim measures. If the petition is rejected or the candidate had not previously filed a petition for interim measures and the relevant contract has been concluded prior to the hearing of the request for annulment, the trial on the request for annulment is in principle abrogated.

What happens if the request for annulment is admitted after the contract is concluded?

If an act or omission of the contracting authority is cancelled after the conclusion of the contract, the latter remains valid and binding upon the contracting parties, under the following conditions: i) the judge competent for the interim measures ordered the conclusion of the contact not to be suspended during the standstill period or ii) the award of the contract was not suspended either by the decision ordering interim measures or through an injunction. Nevertheless, even when the contract has been concluded, the party whose request has been admitted may seek damages on the conditions cited below.

In which cases can a contract that has already been concluded be cancelled?

Any party that has an interest therein, may file before the Court a request for annulment of the contract, even if it had not participated in the awarding procedure, based on the following grounds: i) the contract has been concluded without prior publication in the Official Journal of the EU, in the cases that this is required, ii) the standstill period was not observed, or iii) in the cases of conclusion of a frame contract or of application of a dynamic system, if the obligations set out in article 25 par. 4 subpar. 2 indent 2 (Directive 2004/18 article 32) and in article 27 par. 5 and 6 of PD 60/2007 (Directive 2004/18 article 33) had not been observed. The interested party may also seek the suspension of the performance of the contract until the issue of the Court decision on the request for annulment through a petition for interim measures. Neither recourse for review nor standstill period are provided for in the Law in this case. The performance of the contract may be suspended until the hearing of the petition for interim measures upon an injunction issued by the judge. However, l. 3886/2010 provides the conditions, which, if they are fulfilled by the authority, the contact remains valid. Moreover, as a general rule, a third party who did not participate in the awarding
procedure because of the requirements of the tender documents, e.g. because of the technical specifications which it could not comply with, may seek annulment of the contract already concluded, in case it contains a clause which deviates from the call for tenders or the awarding decision, which would have allowed it to participate.

**What are the results if the public contract is cancelled?**

Should the contract be cancelled all relevant results are retroactively cancelled and the interested party may seek damages against the contractor for unlawful enrichment. The Court decision which admits the request for annulment or rejects it for public interest reasons should also condemn the authority to pay to the applicant a fine not exceeding 10% of the economic object of the contract.

Moreover, should the applicant be successful in cancelling the contract, he may seek compensation from the competent Court as referenced above, based on articles 197 and 198 of the Greek Civil Code (liability from pre-contractual negotiations).

**What if the time limits set out by the L. 3886/2010 are not observed?**

All time limits within which the interested party is entitled to file recourse for review and legal proceedings are exclusive. If they are not observed the relevant proceeding cannot any more be filed, or if filed is inadmissible. The time limit for filing recourse for review starts either as of the notification of the act to the interested party or when it gets full knowledge of the reasons of the act. If it is a Court decision, the time limit starts as of its notification.

On the contrary, all time limits within which the Court must fix the hearing of the case or issue its decision are indicative only.

**Are there any other types of recourse against the award of a public contract?**

Any interested party may file a complaint before the EU Commission, which intervenes to the Government if it considers that there has been a serious breach of EU law.

**Important note**

It is to be noted that because L. 3886/2010 covers the disputes regarding acts issued or omissions arising as of October 1, 2010, while its provisions on jurisdiction and competence entered into force on January 1, 2011 its interpretation by the Courts is expected with grate interest. To this effect, the interpretation and the application by the Council of State of previous L. 2225/1997, the respective provisions of which have been abolished on the same dates, will offer a valuable base.

**Main differences between L. 3886/2010 and the provisions applicable for contracts of a value under the thresholds of Directives 2004/17/EC and 2004/18/EC**

- During the awarding procedure the interested party may be obliged, depending on the applicable provisions, first to appeal against the act or omission of the authority before a higher authority, under penalty of inadmissibility of the request for annulment.
- In case of a supply contact, a duty is payable in case an objection against an act or omission of the authority is filed.
- There is no recourse for review.
- In case the authority is a public one or a public entity, the interested party, instead of interim measures, should first file a request for annulment with the competent
Administrative Court of Appeals and then apply for suspension based on the request for annulment. If the first one is not filled the latter is inadmissible.

- There is no standstill period. Any suspension of the awarding procedure, including the conclusion of the contract, can be ordered by the Committee for Suspension of the Administrative Court of Appeals, until the hearing of the request for annulment. The President of the Court may issue an injunction suspending the progress of the procedure until the hearing of the request for suspension.

- The request for suspension is being heard before the Committee for Suspension of the Administrative Court without interlocutory procedure, except if the President of the Court orders otherwise.

- If the awarding authority is a private entity, interim measures may be filed with the Civil One Member First Instance Court, the filling of which does not depend on the prior filing of the lawsuit. A lawsuit seeking damages may be filed before the Civil First Instant Court.
How can an infrastructure project be financed?

- Through subsidies granted under investment incentives laws.
- With regard to infrastructure projects implemented through public – private partnership arrangements, Greek law 3389/2005 is applicable.
- Through bank loans within the project finance concept. In Greece, due to tax incentives and reduced costs, such loans often follow the bond loan structure under Greek law 3156/2003.

What types of infrastructure investment plans are eligible for subsidy under Greece’s new investment incentives law 3908/2011 (“Law 3908/2011”)?

Investments plans in all economic sectors, except for those not falling within the scope of Law 3908/2011, as indicated below. Investments are classified in the following categories, according to Law 3908/2011:

(a) General investment plans, including:
   - general entrepreneurship;
   - technological development; and
   - regional cohesion.
(b) Specific investment plans, including:
   - youth entrepreneurship;
   - large investment plans; and
   - synergy and networking.

What projects are not eligible?

(a) Investment plans in the sectors of steel, synthetic fibers, coal, construction (except for port and coastal works), shipping, photovoltaic production of electricity, nourishment, programming and broadcasting, protection and research services, certain services which are traditionally provided by the state (such as education, healthcare, national defense, public administration, etc), art and entertainment, sports, hotel units (except for hotel units with at least a 3–star rating), and investment plans implemented by third parties on behalf of the state;
(b) Investment plans implemented by enterprises in the form of civil law companies, or joint ventures, other than synergy and networking clusters operating in the form of joint

1. Certain eligible investment plans falling within the categories of technological development and regional cohesion are listed in Ministerial Decision 17300/2011 (Government Gazette bulletin 653/B'/2011).
2. This category includes investment plans of a minimum amount of €50 million.
3. The following list is indicative, not exclusive; therefore, it is highly recommended to refer to article 2 of Law 3908/2011 for details.
ventures⁴, or enterprises which have been granted aid that has been declared illegal and incompatible with the Common Market.

**What is the value of the investment?**

The minimum budget of the investment ranges from 100,000 to 50,000,000 euros (for large investment plans), depending on the size of the enterprise and the type of investment plan.

**What enterprises are eligible?**

Any enterprise having its registered seat in Greece, maintaining accounting books under category B or C of the Greek Code of Books and Records and operating in any one of the following forms:

- individual enterprise;
- commercial company (such as general partnership, societe anonyme, limited liability company);
- co-operative;
- companies still in the process of being formed, provided that the establishment will be completed within the time period specified in the subsidy approval and in any case prior to the payment of any subsidy amount.

**What is the maximum allowable rate/amount of aid and which criteria determine it?**

The maximum rate ranges between 15%-50% of the qualifying investment cost, depending on the region in which the project is implemented and the size of the subsidized enterprise. The total amount of aid for each subsidized enterprise shall not exceed the amount of 10 million euros over a period of four years. In case of affiliated companies the above threshold shall not exceed the amount of 15 million euros for investment plans implemented within the same region.

The above amounts are doubled for investments falling under the general entrepreneurship category and do not apply with regard to large investment plans.

**What types of aid are granted?**

Depending on the type of investment, incentives under Law 3908/2011 include any of the following, or combination thereof:

- State grants,
- financial leasing subsidies for leasing of new machinery or equipment,
- tax relief, in the form of income tax exemptions, and
- low cost bank loans (investor friendly soft loans) from credit institutions cooperating with the National Fund for Entrepreneurship and Development ("E.T.E.AN" in Greek).

The above incentives are exempted from any tax, stamp duty or other rights as well as from any other charges in favor of the State or any third party.

**Is a state aid clearance required?**


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⁴. This category includes investments by clusters pursuing programmes which will either develop competitive business advantages or best utilize infrastructure created with the aid of national and European financing, or contribute to the adaption of specific and geographically defined productive activities and services towards a modern financial and technological environment.
Which expenses are eligible?  
(a) Expenses for the acquisition of:
   - tangible assets relating to buildings (construction or expansion), production units, machinery and equipment.
   - intangible assets (such as quality control systems, certifications, software supply and installation, acquisition of industrial property rights, exploitation licenses, etc.) up to 50% of the eligible costs of the investment plan.
(b) Works as well as research, development and innovation programs relating to the activities of the subsidized enterprise.
For more information please see Ministerial Decision no. 17297/2011 (Government Gazette bulletin 653/B'/2011) on conditions, restrictions and clarifications on qualifying expenses for investment plans under Law 3908/2011.

Which expenses do not qualify for aid under Law 3908/2011?  
Subject to provisions on youth entrepreneurship schemes, the following expenses are not subsidized:
   - operational expenses of the enterprise;
   - purchase of passenger vehicles;
   - transportation means and related equipment for investment plans in the transportation sector;
   - purchase of furniture;
   - purchase of land;
   - studies and advisors fees, subject to certain exceptions concerning investment plans of newly established small and medium enterprises.

When and how are applications for submission of infrastructure investment plans to the provisions of Law 3908/2011 to be submitted?
Applications, along with all supporting documentation, shall be submitted in hard copy and electronic form in the months of April and October of each year. However, applications for large investment plans may be submitted at any time.
Electronic submission shall be effected through the Information System for Regional State Aid at the following website: www.ependyseis.gr/mis
Online registration of the applicant through the above website is required prior to submission of the application.
Hard copies are submitted to the competent Investor Service offices.

What do I need to pay in order to submit an application?
A fee shall be paid to the competent tax authority ranging from 0.05% to 0.1% of the total investment cost, depending on the investment category. The application must be

5. The following list is indicative, not exhaustive. For a detailed presentation please refer to article 3 (1) of Law 3908/2011.
6. Except construction or expansion of buildings on plots of land not owned by the investor, unless leased to the latter for at least 15 years.
7. The following list is indicative, not exhaustive. For a detailed presentation please refer to article 3 (2) of Law 3908/2011.
8. Electronic submission shall precede submission in written form.
accompanied by a proof of payment of the above fee. For more information please see ministerial decision 17301/2011 (Government Gazette 653/B'/20.4.2011).

Will the above fee be reimbursed if the application is withdrawn?

No.

How long does it take to complete the evaluation of the application?

At least two months from the submission of the application.

Can I appeal if my application is rejected?

Yes, within a period of at most 10 days after the notification of the refusal.

What portion must be covered by own funds?

Investor’s own participation shall not be less than 25% of the qualifying expenses. In particular, if aid is granted in the form of tax allowances, the beneficiary shall pay at least 25% of the investment cost either through own funds or external financing. If the aid is granted in the form of financial leasing subsidies, no own participation is required.

May I assign the subsidy to banks to finance the project?

Yes. Assignment of the subsidy to banks is allowed for short-term lending (bridge financing) of the same amount.

When can implementation of the project commence?

Commencement of implementation of the project shall occur after publication of the subsidy approval in the Government Gazette. Commencement of the implementation of the project may also occur following submission of the subsidy application to the competent authorities, in which case investor shall assume the risk of withdrawal of its application. If implementation of the project has started prior to submission of the application, the investment plan will be rejected.

When will the subsidy be paid?

The subsidy shall be paid within three months as of issuance of the relevant approval as follows:

- 25% of the subsidy amount can be paid in advance, following a relevant request by the beneficiary, against delivery by the latter of a letter of guarantee of an amount equal to the advance payment increased by 10%;
- 25% upon certification of implementation of 50% of the project, and
- 50% upon certification of completion of the investment and commencement of operation.

What happens if the project is abandoned?

The subsidy approval will be revoked and the grant has to be returned. In case of tax incentives, any unpaid tax shall be wholly or partially paid, as if the relevant incentive was never granted.

What is a public-private partnership (PPP)?

PPPs under Greek law 3389/2005 are contracts between a public body (the “Authority”) and a private entity, acting through a special purpose vehicle (the “SPV”) for the implementation of

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9. For specific steps and deadlines please see precedential decree 33/2011 (Government Gazette 83/A'/14.4.2011). Any deadlines for the evaluation of the application indicated therein do not apply with respect to large investment plans.
projects falling within the competencies of the Authority, except for those for which the state has sole responsibility, such as national defense, justice, and public safety. The financing and construction risk for a PPP project is undertaken by the SPV against consideration payable by the Authority or the end users of the project, either as a lump sum or in installments. The PPP arrangement applies to projects with an estimated cost not exceeding €200,000,000.

How do public entities participate in the financing?
Either with money or in-kind contributions (i.e. concession of use of property or rights in rem over real estate or project exploitation rights through the duration of the concession).

How can a PPP project become bankable?
In order to facilitate financing of the project, the State may guarantee payment of the contractual consideration by the Authority against the SPV, following a relevant request by the Authority and granting of the required approval.

Are there any other allowances available?
Any VAT credit is to be returned to the SPV within 90 days as of submission of a relevant request.

What is the National Strategic Reference Framework (NSRF) 2007-2013?
NSRF 2007-2013 is the reference document for programming of EU funds amounting to approximately 20 billion euros at national level until 2013. NSRF 2007-2013 emphasizes on regional development, therefore approximately 80% of the available funds will be allocated to projects implemented in the Greek periphery.

What types of infrastructure projects can be subsidized through NSRF 2007-2013?
Infrastructure projects relating to accessibility, including development and improvement of transportation infrastructure (e.g. roads, railway, airports, port infrastructure etc.), energy supply and expansion of energy transmission networks, waste management, flood protection projects, research, innovation and telecommunications.

How can I get financing for an infrastructure project through NSRF 2007-2013?
There is no general procedure applicable on all types of projects. Aid is provided on a case-by-case basis, and depends on the calls for proposals published on the NSRF 2007-2013 website. You will have to follow the link below where all active and pending “calls for proposals” are published and search for financing opportunities regarding infrastructure projects. In the search engine, uncheck the field “Public Entities”.
http://www.espa.gr/en/Pages/Proclamations.aspx
By clicking on each result you may find all available information on the proposal (i.e. type of aid, implementation location, beneficiaries, budget, deadlines for submission of applications, contact details, and all relevant files and links).

What are the benefits of a bond loan structure under Greek law 3156/2003?
By issuing bonds, smaller amounts can be combined in a substantial capital to be used by the bond loan issuer for the financing of profitable investments. Moreover, issuing of a bond loan under Greek law 3156/2003 and any transaction relating thereto are exempted from any tax, fee, stamp duty, levy, including levies under Greek law 128/1975, or any other charges in favor of the State or any third party. For any registration (e.g. registration of pledges or other rights in rem granted as collateral) or entry into public books kept at land registries, only a fixed fee of 100€ is paid, and payment of any other amount is excluded.
Can I use movable assets as collateral to get financing while keeping possession of the asset?
Yes. Pursuant to Greek law 2844/2000, pledge over movable assets may also be granted without delivery of the asset following a written agreement between the pledgor and the pledgee and subject to publication requirements, provided, however, that the parties are businesses or professionals and the security is granted for the needs of the enterprise or the profession of the debtor.

Can I grant security over a group of assets or a group of rights in order to get external financing?
Yes, pursuant to Greek law 2844/2000. A written agreement between the pledgor and the pledgee, and publication thereof, is required as per answer 5 above.

What other types of collateral can be granted to facilitate financing of the project by credit institutions?
Security over bank accounts or receivables, as defined in Greek law 3301/2004 which incorporated the collateral directive into the Greek legal system. A private agreement will be sufficient to this end, in practice perfected through notification by a court bailiff to the relevant banks/obligors entailing the cost of service. Any collateral granted under law 3301/2004 is “bankruptcy immune”, in the sense that such collateral may not be declared null and void on the sole basis that it was granted on the day of the commencement of winding-up proceedings, but prior to the decree ordering such commencement, or in a prescribed period prior to the commencement of these proceedings, thus limiting credit risk for financing the project. Moreover, enforcement of such collateral does not require notification of the intention to liquidate, or that the liquidation will be effected through a public auction.
MERGERS & ACQUISITIONS
Which are the major Greek tax incentive laws in respect of mergers and acquisitions?

In chronological order, they are: (i) legislative decree 1297/1972 (arts. 1-12), the force whereof is due to expire on 31 December 2011, unless extended; (ii) law 2166/1993 (arts. 1-5); (iii) law 2515/1997 (art. 16); and (iv) law 2578/1998 (arts. 1-8), as in force, in each case, from time to time (each the “Law”, and collectively the “Laws”).

By and large, the Laws are oriented towards business combinations and/or transformations (namely, mergers, de-mergers, conversions and spin-offs), to the exclusion of asset purchases (other than by way of a merger through acquisition) or stock purchases. For the avoidance of doubt, legislative decree 1297/1972 and law 2166/1993 must be opted-in, otherwise ordinary company law provisions apply; by contrast, law 2515/1997 is mandatorily applicable within its scope. Finally, as regards law 2578/1998, where a relevant transaction falls within its ambit and the application requirements are met, it operates automatically without need to opt in.

Which Laws are applicable to foreign legal entities (including Greek branches thereof)?

(i) Law 2166/1993 in regard to the conversion of Greek branches of foreign entities (other than bank branches) to societes anonymes or limited liability companies; (ii) law 2515/1997 in regard to the conversion of Greek branches of foreign banks to Greek ones; and (iii) law 2578/1998 in regard to mergers, de-mergers, spin-offs (including conversion of branches to subsidiaries of the undertakings they are part of).

Which is the scope of each Law?

(I) Legislative decree 1297/1972 is:

(A) Applicable to,

- The conversion, merger or de-merger (whether by absorption or constitution of a new undertaking) of any type of business into or towards constituting (i) societes anonymes (“S.A.”), or (ii) limited liability companies (“LLC”); provided, in case (ii) hereinabove, that none of the merging, de-merging or converting entity (as the case may be) is a societe anonyme; and,
- The spin-off by undertakings (regardless of type) of one or more, albeit not all, of their divisions or branches to an (existing or to be constituted) S.A.

(B) Not applicable to,

- Undertakings mainly concerned with construction (where the valuable consideration consists in part of the project), or real estate leasing (except for hotel enterprises). By derogation, where a construction undertaking is to merge through absorption of a non-construction undertaking, in the aforementioned sense of the term, the merger will qualify under legislative decree 1297/1972;
Undertakings constituted or incorporated abroad (including Greek branches thereof), although Greek subsidiaries thereof fall within the ambit of the law;

Spin-offs, mergers or de-mergers, where (i) the undertaking spinning off or accepting a spinoff division or branch, or (ii) the merging/de-merging undertaking, or (ii) the undertaking to absorb the merging or de-merging undertaking, are existing, though dormant (i.e. inoperative), ones; and

Mergers or de-mergers where down-scaling results, i.e. the absorbing or the newly constituted undertaking is of an inferior type to that of the undertakings concerned. By way of illustration, an S.A. cannot merge with an undertaking, where the absorbing or resulting undertaking is other than an S.A. (for example, a LLC).

(II) Law 2166/1993 is:
(A) Applicable to,
- The conversion or merger of undertakings into S.A.’s or LLC’s;
- The merger of undertakings by way of absorption from existing S.A.’s or LLC’s;
- The merger of S.A.’s by way of absorption from, acquisition against a cash payment of, existing S.A.’s, as well as the constitution of a new S.A.;
- The de-merger of societies anonymes by way of absorption from existing ones; and,
- The spin-off from undertakings (regardless of type) of one or more, albeit not all, divisions or branches to an existing S.A.

(B) Not applicable to,
- Undertakings mainly concerned with construction (where the valuable consideration consists in part of the project), or real estate leasing (except for hotel enterprises. For a derogation from said rule, please refer to (I)(B)(1), hereinabove, which is also applicable hereto;
- Undertakings constituted or incorporated abroad (including Greek branches thereof), although Greek subsidiaries thereof fall within the ambit of the law
- Spin-offs, mergers or de-mergers, where the undertaking: (i) spinning off a division or branch, or merging/de-merging, and (ii) acquiring the division or branch (in case of spin-off) or absorbing the merging or de-merging undertaking, is existing, though dormant (i.e. inoperative); and,
- Mergers or de-mergers where down-scaling results, i.e. where the absorbing or the newly constituted undertaking is of inferior type to that of the undertakings concerned. For example, an S.A. cannot merge with any undertaking, where the absorbing or resulting undertaking is other than an S.A. (for example, a LLC).

(III) Law 2515/1997, in terms of tax exemptions and dispensations, is,
(A) Applicable solely to Greek credit institutions (i.e. banks), except in case (III)(A)(3) hereinbelow, with respect to:
- Mergers through absorption of an existing, or constitution of a new, (Greek) bank, or through acquisition of a (Greek) bank against cash payment;
- De-mergers by way of absorption from an existing, or constitution of a new, (Greek) bank;
- Conversions of Greek branches of foreign banks into Greek ones;
- Spin-offs of branches, divisions or parts from and to Greek banks; and,
Spin-offs of Greek branches of foreign banks to European Union ("E.U.") banks.

(B) Not applicable to,
- Transactions, other than those referred to hereinabove, between Greek banks;
- Transactions between Greek or foreign undertakings (other than banks);
- Transactions between (Greek or foreign) banks and financial institutions (other than banks); and,
- Any transactions between foreign credit banks, other than those referred to in case (III)(A)(5), hereinabove).

It should be stressed that transactions between Greek credit institutions and Bank of Greece supervised financial institutions (e.g. leasing companies, etc.) do fall under law 2515/1997, albeit as regards only (the requirement for) administrative approvals and consents, and not the tax exemptions or dispensations available to banks pursuant to said law.

(IV) Law 2578/1998, by virtue whereof Greek tax legislation has been harmonized to Directive 90/434/EEC (as amended by Directive 2005/19/EC), is:

(A) Applicable to,
- Mergers, by way of absorption from an existing, or constitution of a new, undertaking;
- De-mergers, whether: (i) fully fledged (i.e., by way of absorption from an existing undertaking or constitution of new undertaking(s)); (ii) partial de-mergers (i.e., by way of contribution from one undertakings to another of one or more, albeit not all, divisions of the former against delivery by the latter to the stakeholders of the former of stock consideration);
- Stock exchanges; and,
- Asset contributions, i.e. spin-offs of divisions to other undertakings, including conversion of branches into (subsidiary) undertakings, and contribution by E.U. undertakings of their Greek permanent establishment (e.g. offices or branches) to a Greek or other E.U. undertaking.

(B) Not applicable to,
- Purely domestic situations, i.e. where the undertakings concerned are not domiciled in the same, and not different, E.U. member-states;
- Transactions where all undertakings concerned are not E.U. domiciled; and,
- Contributions by Greek undertakings of their permanent establishment in other E.U. member-states.

Which are the advantages and disadvantages of each Law?

A distinction needs to be drawn between: (i) purely domestic vs. cross-border transactions, and (ii) transactions between ordinary undertakings and single purpose undertakings (e.g. credit institutions). More specifically:

(A) When purely domestic situations are involved, in which case the Laws (other than law 2578/1998) are largely applicable, then:

(I) (a) Unlike law 2166/1993, legislative decree 1297/1972:
- Permits the revaluation of the net asset value ("NAV") of the undertaking to be merged or de-merged, or of the business branch to be spun-off, on a fair value basis, thereby promoting significant income tax savings when these assets are subsequently disposed. This is because income tax will be assessed with regard to
the revalued, and not the book, asset value, thereby diminishing the capital gain (if any) to result. Moreover, the balance between the (aforesaid) two values will be credited to a special reserve and shall remain income tax free till the date of dissolution of the undertaking concerned (except for purposes of further merging or de-merging with other undertakings). Obviously, this advantage can be of use, when (i) the asset fair value is substantially higher than the asset book value, and (ii) the revalued asset is to be disposed of at a price equal to or higher than the new asset book value.

- Does not require undertakings to have drawn-up one (1) at least balance sheet for a minimum term of twelve (12) months and keep double-entry books.

Nonetheless, whereas real estate transfers under legislative decree 1297/1972 are free from real estate transfer tax, that exemption is conditional on the transferred real estate (x) being used for productive purposes (hence, the transfer idle assets or assets leased to third parties are fully taxed), and (xi) continuing to be used for such purposes for an additional period of five (5) years as of transfer date, except where the same is disposed and the proceeds thereof are applied towards the purchase of (new or used) fixed assets or the discharge of obligations of the undertaking concerned to credit institutions, the State or social security organizations. Finally, in all instances of business combinations (mergers and de-mergers), the carried-forward tax losses of the undertakings concerned are no longer recognized, except where said losses are carried forward by the absorbing undertaking in respect of mergers through absorption. On the other hand, spin-off’s and undertaking conversions are not affected in terms of recognition of carried forward tax losses by the spinning off or transferee undertaking.

(b) Conversely, law 2166/1993 prevails over legislative decree 1297/1972 in terms of: (i) speed (2-3 months, compared to 3-4 months, to complete a business combination), (ii) predictability of outcome (pooling of interest, no need to conduct a revaluation exercise), (iii) unconditional exemption from real estate transfer tax, and (iv) no need to draw-up closing financial statements upon the dissolution of an undertaking due to merger or de-merger.

However, in all instances of business combinations (mergers and de-mergers), the carried-forward tax losses of the undertaking concerned are no longer recognized. By contrast, spin-offs and conversions are not affected in terms of recognition of carried forward tax losses by the spinning off or the transferee undertaking.

(ii) Law 2515/1997 is the only one dealing with bank mergers, de-mergers and spin-offs on a tax free basis; hence, no comparison or choice.

(B) On a cross-border, E.U. wide basis, law 2578/1998 is the only one dealing with mergers, de-mergers, spin-offs and share exchanges. Admittedly, bank spin-offs also come under law 2515/1997, though, unlike law 2578/1998, no tax exemptions are available.

How does each Law operate?

(A) Legislative decree 1297/1972 regulates business combinations which are conducted on a fair value basis, as the same is determined by a statutory committee of experts or by certified accountants, in each case at the choice of the undertaking concerned. The (post-appraisal) NAV of the transferor undertaking or the business branch to be spun-off (as the case may be) is then aggregated with the share capital of the transferee and the total constitutes the transferee’s new share capital. To that end, an ‘appraisal balance
sheet’ is drawn-up by the undertaking to be absorbed (via merger or de-merger) or the assets whereof are to be spun-off, and the items listed thereon are appraised on a fair value basis, thereby leading to a new NAV, with regard to which a share exchange ratio is calculated. Profits/losses from transactions carried out in the interim period, i.e. between the date of the ‘appraisal balance sheet’ and that of asset transfer, are for the account of the transferor undertaking which is taxed thereon. Hence, NAV variations between the aforesaid dates need to be addressed, in the sense that profits have to be distributed to, and losses covered by, the undertaking’s shareholders or partners, prior to the business combination taking effect.

It is quite obvious that legislative decree 1297/1972 is recommended for business combinations having a lot of (mainly fixed) assets susceptible to being undervalued in the undertaking’s books; in those instances, the (post-appraisal) values shall be recognized on a tax free basis, thereby enhancing the capital base of the undertaking concerned. (B) Law 2166/1993 regulates business combinations which are conducted on a ‘pooling of interest’ basis. To that end, a “transformation balance sheet’ is drawn-up by the undertaking to be absorbed (via merger or de-merger) or the assets whereof are to be spun-off, and the book value thereof is certified by a statutory committee of experts, tax authorities or certified accountants, in each case at the choice of the undertaking concerned. The share capital of the undertaking to be absorbed (or, in cases of spin-off, the NAV of the spun-off division, etc.) is aggregated to that of the absorbing or transferee undertaking, and the total constitutes the latter’s new share capital. Assets are transferred hereunder on a book value basis, while profits and losses from transactions carried out by the transferor in the interim period, i.e. between the date of the ‘transformation balance sheet’ and that of asset transfer, are for the account of the transferee undertaking.

(C) Law 2515/1997 regulates business combinations between banks which may be conducted on either a fair value or a ‘pooling of interest’ basis. In most other respects, the procedural rules governing the operation of legislative decree 1297/1972 or law 2166/1993 (as the case may) are applicable hetero.

(D) Law 2578/1998 regulates business combinations which are conducted on a cross-border basis between undertakings in different E.U. member-states. Asset transfers are carried-out on a fair value basis, as the same is determined (in the case of Greece) by a statutory committee of experts or certified accountants. In most other (procedural) respects, ordinary rules of (Greek) company law apply, which essentially are similar to those of legislative decree 1297/1972 (see Q.5(A), hereinabove).

Which are the tax benefits available under each Law?

(A) Pursuant to legislative decree 1297/1972, eligible undertakings are exempt from any direct or indirect taxation (other than E.U. harmonized taxes, for which the relevant rules are applicable) in regard to business combinations falling within the ambit of said Law. Capital gains (if any) to be result from such combinations are credited to a special reserve of the absorbing or transferee undertaking and remain tax-free, so long as they is not distributed either in the ordinary course of business or in consequence of dissolution (except, where dissolution is the result of a new business combination). As far as real estate transfer tax exemptions are concerned, reference is made to Q.4(A)(I), hereinabove.

(B) Pursuant to law 2166/1993, eligible undertakings can avail themselves of tax benefits and exemptions similar to those under legislative decree 1297/1972, albeit, in regard to real estate transfer tax, without any conditions attached. Capital gains are not tax
exempt, since no such gains can conceivably arise or recorded in business combinations conducted under a pooling-of-interest method.

(C) Pursuant to law 2515/1997, tax benefits and exemptions similar to those under legislative decree 1297/1972 and law 2166/1993 (as applicable) may be availed of by credit institutions, depending on whether a regulated business combination is to be conducted on a fair value or pooling-of-interest method. Regardless however of the method, carried forward losses by a merging or de-merging entity are no longer recognized, unlike spin-offs where recognition of carried forward tax losses is not affected.

(D) Pursuant to law 2578/1998, capital gains to arise from eligible business combinations by Greek undertakings (other than spin-offs of their permanent establishment in another E.U. member-states), together with the transfer of their existing reserves, are tax exempt (in each case subject to the terms of said law). The treatment of tax losses by Greek undertakings is similar to that under law 2166/1993, i.e. no tax losses of either merging entity may be carried forward. On the other hand, foreign undertakings are not taxed in Greece with respect to capital gains from business combinations involving Greek undertaking, until such time as their Greek permanent establishment ceases to exist, etc.
Which are the authorities responsible for Merger control enforcement?

The merger authority in Greece is the Hellenic Competition Commission (the “HCC”). The HCC is an independent authority that operates under the supervision of the Ministry of Finance, Competiveness and Maritime.

The Board of the HCC comprises of eight (8) members: The President, the Vice President and six (6) more members, out of which 4 (the “Rapporteurs”) are full time employees of the HCC.

HCC deals with mergers with a national dimension, but is also competent to handle mergers with a community dimension, which are referred to it by the European Commission under EU Regulation 139/2004.

The task of the HCC is to identify and prohibit those mergers, which have such an adverse impact on competition that any benefits resulting from them are out-weighted or should be ignored.

HCC is responsible for the enforcement of the merger control rules and the assessment of the transactions notified under these rules. HCC has the power to allow or to prohibit a transaction, to impose certain conditions or to grant derogations. Each case is allocated to one of the four Rapporteurs. The Rapporteur prepares in cooperation with the relevant department of the HCC a Statement of Objections that constitutes the starting point of the examination of a case.

Which legislation applies to Merger control?

Greek merger legislation has recently changed and the Law No 3959/2011 (the “Competition Law”) is in force since April 2011. In view of this, a change in the legislation is not anticipated in the near future. The European Merger Control Regulation (EUMR), EC case law, as well as all the relevant guidelines issued by the European Commission are taken into consideration by the HCC in interpreting and applying the Greek merger legislation. The merger provisions of the Competition Law apply to all sectors of the economy. However, the legislation applicable in the media sector (Law 3592/2007), covering television, radio, newspapers and magazines, sets out specific provisions which apply in relation to transactions in that sector, specifically concerning the thresholds for the notifications as well as the calculation of turnover and market share.

Are there any other authorities relevant to merger control? What is the allocation of responsibilities?

HCC is exclusively competent to apply merger control regulation in all sectors. Nevertheless, in certain regulated sectors, as telecommunications and energy,
the merger control is entrusted to other national regulators (EETT for the telecommunications sector and RAE for the energy sector) which act in cooperation with the HCC. Article 24 of the Competition Law provides the terms of the cooperation between the authorities. Given the lack of specific guidelines the submission of a notification to both relevant authorities (the national regulator and HCC) is currently advisable.

What are the types of transactions caught by merger control regulations?

Merger control is exercised on “concentrations” resulting in a “lasting change” in the undertakings concerned and therefore in the structure of the market. The definition of a “concentration” is included in article 5 of the Competition Law and is identical to the one included in article 3 (1) of the EUMR. Article 5 (1) of the Competition Law provides that: “A concentration shall be deemed to arise where there is a change of control on a lasting basis results from:

- The merger of two or more previously independent undertakings or parts of undertakings, or
- The acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings whether by purchase of securities or assets, by contract or by any other means, of control of the whole or parts of one or more other undertakings.”

Furthermore, Article 5 (5) provides: “The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration under the meaning of this article.”

The definition of “control” is included in Article 5(3) and is identical to the definition provided in article 3 (2) of the EUMR: “Control shall be constituted by rights, contracts or other means which, either separately or in combination and having regards to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

- ownership or the right to use all or part of the assets of an undertaking;
- rights or contracts which confer decisive influence on the composition, voting or decisions of the bodies of an undertaking.”

The Competition Law merger control provisions intend to track transactions which lead to an undertaking (or undertakings) acquiring the ability to control the strategic commercial behavior of another undertaking. Article 5 (4) of the Competition law provides that: “Control is acquired by the person/persons or undertakings which:

- are the holders of the rights or are entitled to rights under the contracts concerned; or
- have the power to exercise the rights derived from the contracts concerned, while not being holders of such rights or entitled to such rights.”

In view of the above it is clear that a concentration subject to the merger control may take the form of the acquisition of sole or joint control. Under the provisions of the Competition Law even the acquisition of a minority interest may qualify as
A concentration, if such acquisition confers sole or joint control, as in the case of a minority shareholder that has extended blocking rights on important decisions of the undertaking.

Furthermore, the above rules apply to transactions leading to change in the quality of control (from sole to joint) and this way covers transactions that may result to: a. an entrance of one or more new controlling shareholders irrespective of the fact that they replace existing controlling shareholders, or b. to reduction of the number of controlling shareholders.

Creation of a joint venture that is performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of the merger control provisions of the Competition Law. A co-operative joint venture may be exempted under the merger control rules, but may be subject to control by the HCC under the rules set in articles 1 (prohibition on anti-competitive business agreements) and 2 (prohibition of the abuse of dominant position) of the Competition Law.

**What are the Pre-Merger Notification Thresholds?**

Assuming that a concentration does not have a “community dimension” under the EUMR rules, such concentration is subject to pre-merger notification if it exceeds the following thresholds provided in Article 6 (1) of the Competition Law:

- the combined aggregate worldwide turnover of all the undertakings concerned is at least €150 mil; and cumulatively
- the aggregate turnover of at least two of the undertakings concerned in the Greek market exceeds €15 mil”

The above thresholds apply to all market sectors, except the media sector, for which law 3592/2007 provides the following thresholds:

- the combined aggregate worldwide turnover of all the undertakings concerned is at least €50 mil; and cumulatively
- the aggregate turnover of each of at least two of the undertakings concerned in the Greek market exceeds €5 mil”

In order to calculate the above thresholds it is necessary to identify the type of concentration and then (a) the “undertakings concerned” and (b) their turnover.

**Which are the “undertakings concerned”?**

In a merger the undertakings concerned are the merging entities. In an acquisition of control it is the concept of acquiring control that will determine which are the concerned undertakings. On the acquiring side it can be one or more undertakings acquiring sole or joint control. On the acquired side it can be one or more undertakings in whole or in part.

**How is the turnover of the “undertakings concerned” calculated?**

Article 10 (1) of the Competition Law defines turnover as the amounts derived by the undertakings concerned in the previous financial year from the sale of the products and provision of services falling within the undertaking’s ordinary activities (in the national market or internationally as the case may be).
The calculation is based on the figures of the last audited financial accounts of the undertakings concerned. Article 10(2) sets out the rules which apply where the concentration consists of the acquisition of part or parts of one or more undertaking(s). In such case, the turnover of the part or parts are taken into account. Article 10(3) sets out the special rules that apply to credit and other financial institutions and insurance companies. Article 10(4) sets out the rules for the calculation of turnover for undertakings belonging to a group. It provides that the turnover is calculated not only by reference to those undertakings concerned but also by reference to the turnover of all those entities which they control or by whom they are controlled, and to other connected undertakings. Please note that the definition of “control” provided in article 10(4) is different and more strictly defined than the definition included in article 5(4) of the Competition Law. In the event of group’s turnover calculation, under article 10(4), intra-group transactions are excluded and the relevant amounts should be deducted from the aggregate turnover of the group (Article 10(5) of the Competition Law).

**Are transactions that do not meet Pre-merger notification thresholds subject to substantive merger control?**

No. The need for a post-merger notification of certain transactions provided by previous legislation (Law 703/77) is now abolished.

**What is the Deadline of the Pre-Merger Notification? At what stage of the transaction is the Pre-Merger Notification filed?**

Pre-merger notification is mandatory and there are no exceptions. The notification takes place within thirty (30) days from the entry into an agreement or the publication of an offer or an exchange, or the obligation from an undertaking to acquire a participation, which secures the control of another undertaking (Article 6(1)). The transaction should be notified following the first triggering event (Article 6(2)).

**Who are the Notifying Parties? Are there any filing fees?**

All parties to a merger are subject to the obligation to notify. In all other cases of concentration, the notification should be notified by the person/persons undertaking/undertakings acquiring control. There is no distinction between Greek or foreign undertakings and no exceptions, in the event of a transaction that falls subject to the Greek merger control rules. There is a filing fee of €1,100. Article 45(1)

**Is there a prohibition to complete the transaction before clearance by the HCC is received?**

Yes. The implementation of a concentration prior to receiving the clearance of HCC is not allowed. Article 9(1) There are the following exceptions:

- In the event that an undertaking acquires control as a result of a public offer or other stock exchange transactions and provided that these transactions were duly notified to HCC and the entity that acquires control does not exercise its voting rights.
rights or exercises them only in order to preserve the total value of its investment. In such case special permit is granted by HCC (Article 9(2)); or

- In the event that the derogation is permitted by a special decision of the HCC in order to avoid severe damages.

Is there a special notification form? Which is the working language of the HCC?

The content of the notification forms are defined by a decision of the HCC. The latest standard pre-merger notification form was determined by decision No 523/VI/2011. Forms are available on-line on HCC’s website (www.epant.gr) and are only available in Greek language.

The notification form and all supporting information should be submitted in Greek language. In the event that the originals are in another language these are submitted in their original language with an official translation in Greek.

Are there procedures available to request confidential treatment?

The notifying parties may request confidentiality for certain parts of the information submitted. This commercially sensitive information is omitted from the HCC’s decision, when published. The Competition Law provides sanctions for breach of confidentiality by the HCC’s officials (Articles 6 (6) and 41 of the Competition Law).

What are the phases of the examination?

Following the notification, a preliminary examination of the transaction is conducted (Article 8). Within one (1) month from the receipt of a complete file of the notification, the President of the HCC has to issue a decision that either allows the merger to be carried out or initiate the process of a thorough examination (Phase II). If the notified concentration does not raise serious doubts as to its compatibility with the Competition Law the HCC issues a clearance within a month (i.e. within the same period granted for the verification that the concentration is within or outside the scope of the Competition Law). If the HCC finds that the concentration raises serious doubts, then the President issues a decision and initiates Phase II. Following this decision the case should be introduced before the HCC within forty five (45) days from from the initiation of Phase II and the HCC has to decide within ninety (90) days from the initiation of Phase II. The HCC may approve the concentration as notified or impose certain conditions in order to ensure compliance of the concentration with the Competition Law.

Is it possible to negotiate remedies? At what stage?

From the date that the notifying parties are informed that Phase II is initiated and within a period of fifteen (15) days the notifying parties may propose remedies. The HCC may accept these remedies. In this case the deadline for the issuance of a decision is extended by fifteen (15) days. By virtue of Decision n. 524/VI/2011, HCC has created for the first time a special form for the submission of remedies, which is available on-line on HCC’s website (www.epant.gr).
What are the risks of not filing? Formal sanctions and statute of limitation. Possibility of civil actions.

HCC may impose the following fines:

- at least €30,000 and up to 10% of the aggregate turnover as defined in Article 10 of the Competition Law (Article 6(4)) in the case that an undertaking violates its obligation to notify in time a concentration or in the event that the parties implemented a concentration before the issuance of the approval by HCC (Article 9(1));
- up to 10% of the aggregate turnover of all participating undertakings in the event of not compliance with the remedies or conditions imposed by the HCC (Article 8(8)).

Can a decision of merger be appealed?

Decisions of the HCC may be appealed before the Administrative Court of Appeals of Athens within sixty (60) days from of the relevant decision.
When is a sale transaction considered a transfer of “business” vs an “asset” deal?

Greek case law has defined the concept of a business as including the total of tangibles, rights, including movables and immovables, claims, liabilities, clientele, goodwill, trademark etc concentrated in an economic unit. Furthermore, a sector of a business may also be considered a business when it is functionally independent from the entire business and, when transferred, can be fully operative without any support. Finally, transfer of certain assets and liabilities can also be construed as a business sector of an enterprise if, after the transfer, they can form an independent unit fully operative.

What criteria can we use to distinguish a transfer of “business” vs an “asset” deal?

When trying to decide if a sale of assets and liabilities constitutes a transfer of a business, one has to take into consideration not only the agreements signed between the parties and the invoices issued but also the nature and significance of the assets and liabilities (“A&L”) being transferred and the facts surrounding the transaction. The following criteria may be used:

- Can the transferred A&L be fully and independently operative after the transfer?
- Do the A&L constitute an independent segment of the seller’s business from a functional and managerial perspective?
- Was such independence supported by separate accounting?
- Can the buyer carry out the transferred activity?
- Will the buyer continue the seller’s activity that was related to the A&L purchased?
- Was goodwill paid?
- Will the seller cease the activity related to the A&L sold?
- Will the buyer acquire the accounts receivable and payable related to the A&L?

Are there different civil liability issues involved if the transaction is considered a transfer of “business” vs an “asset” deal?

In the event the sale of the assets and liabilities is considered a transfer of business, the buyer will be considered a “successor” of the buyer and, according to Art. 479 of the Greek Civil Code, the buyer can be held liable towards the seller’s creditors for debts owed by the seller, up to the value of the assets and liabilities transferred from the seller to the buyer. Art. 479 covers debts arising from taxes, provided they relate to time before the sale, irrespective as to when the tax authorities finally assessed the tax.
Are there employment issues to be taken into consideration if the transaction is considered a transfer of “business”?

If the transaction is considered a transfer of business, both the seller and the buyer should take into consideration Presidential Decree 178/2002 (i.e. implementation of the EU Acquired Rights Directive), which applies to any transfer of an undertaking, business, or part of an undertaking or business, to another employer as a result of a legal transfer or merger. The basic principal of the European Union Acquired Rights Directive and thus, of the Presidential Decree, is the protection of employees whose business is being transferred to another business. To this end, all rights and obligations arising from an employment contract or relationship existing on the date of transfer are transferred to buyer, i.e. the new employer.

Is the tax treatment of a “business” transfer different than that of an “asset” deal?

Yes, the tax treatment of a “business” transfer is different from that of an “asset” deal. Crucially, in the event of a tax audit, the tax authorities may consider the particular sale of assets and liabilities as a transfer of business, even if the seller and the buyer characterize their agreement as an individual sale of assets and liabilities. In this case, the burden of proof lies with the tax authorities.

What are the tax implications if the transaction is considered a transfer of “business”?

In the event that the relevant transaction is considered a transfer of business, the following tax implications arise:

**Income tax (Capital gains tax)**

According to Article 13 (1) (a) of the Greek Income Tax Code (“GITC”), capital gains tax is imposed on the transfer of business or business division at the rate of 20% on the higher between the actual and the imputed gains (i.e. the imputed gains are determined on the basis of a fixed formula specified in the GITC). The capital gains tax liability is borne by the seller. The buyer is jointly and severally liable for this tax in the event the seller fails to pay it. In the event the sale is made by a Greek société anonyme (“AE”) or a limited liability company (“EPE”), the 20% tax constitutes an advance tax and it does not extinguish the AE’s or the EPE’s income tax liability since this income will also be subject to taxation according to the general provisions of the GITC. In other words, the gain will be added to the seller’s ordinary business income in order to calculate the seller’s taxable income, and the 20% tax already paid will be set-off against the seller’s annual income tax liability.

**VAT and Stamp duty**

Transfers of an entire business, sector or division are outside the scope of VAT and therefore not subject to Greek VAT. On the other hand, they are subject to Greek stamp duty at the rate of 2.4% on the net asset value of the business being transferred. If the purchase price is higher than the net asset value, the tax authorities will assess stamp duty on the higher amount. If the net asset value is negative, the stamp duty will be imposed only on the purchase price. The burden of stamp duty is a matter of agreement between the contracting parties. If such an agreement does not exist it is borne by the purchaser.

**Deductibility of Goodwill for the Buyer**

Goodwill paid by the buyer is the difference between the purchase price and the fair value (i.e. the net asset value) of the transferred assets and liabilities. The goodwill should be deductible for tax purposes and, therefore, goodwill should be either deducted in
What is the procedure for finalizing the sale, if the transaction is considered a transfer of “business”?

From a procedural point of view, the capital gains tax return must be filed with the tax authorities. The purchase agreement must also be filed and certified by the tax authorities, if the purchase is effected by a private contract. In the event the purchase is effected by virtue of a notarial deed, the notary public is obliged to make reference to the capital gains tax return in the deed, which implies that the filing of the return precedes the signing of the deed. A notarial deed need not be filed with the tax authorities.

What are the tax implications if the transaction is considered a transfer of “assets”?

In the event that the relevant transaction is considered as a transfer of assets, the following tax implications arise:

**Capital gains tax**

No capital gains tax arises. Any profit or loss realized by the seller from the sale of the assets will be recorded as such in the P&L Account and subject to income tax accordingly.

Notwithstanding the above, if among the assets being sold there are rights related to the carrying out of the seller’s business (i.e. intellectual property, clientele, goodwill from the lease of premises etc), such sale will be subject to capital gains tax at a rate of 20%. In the event the sale is made by a Greek société anonyme (“AE”) or a limited liability company (“EPE”), the 20% tax constitutes an advance tax and it does not extinguish the AE's or the EPE's income tax liability since this income will also be subject to taxation according to the general provisions of the GITC. The capital gains tax liability is borne by the seller. The buyer is jointly and severally liable for this tax in the event the seller fails to pay it.

**VAT and stamp duty**

The sale of assets will be subject to Greek VAT at the applicable tax rate. The assignment of claims and the assumption of liabilities may be subject to stamp duty at a rate of 2.4%, instead of VAT, in special cases. The claims and liabilities transferred should be carefully reviewed in order to determine whether Greek stamp duty is due.

**Goodwill**

In the event of transfer of separate assets, no goodwill arises.

What type of spin offs are provided by Greek corporate law?

A spinoff is a type of divestiture through the division of an existing company. Greek corporate law 2190/1920 provides that the division of a Greek société anonyme (AE) may be effected either by (i) absorption (ii) incorporation of new companies or (iii) both:

- In the 1st case, all the assets and liabilities of an existing AE (which is dissolved without being liquidated) are transferred to other existing AEs against allocation to its shareholders of shares in the recipient AEs and cash (if applicable). The cash, if applicable, cannot exceed 10% of the nominal value of the shares allocated to the
shareholders and in aggregate the value of the shares allocated cannot exceed the net asset value of the assets being contributed by the company being divided.

- In the 2nd case, the same rules apply as in the 1st with the only difference being that the assets and liabilities of the AE are allocated to at least two newly established AEs incorporated at the same time.
- In the 3rd case, the same rules apply with the only difference being that the assets and liabilities of the AE are allocated to other existing and newly established AEs.

**Which procedure should be followed to complete a division?**

Given that there are three different kinds of divisions, we provide a general overview of the procedure to be followed in the 3rd case above (i.e. an AE is divided into an existing AE and a newly established AE), taking into consideration Laws 2190/20, 2166/93 and 1297/72 (the two main tax incentive laws):

- The Board of Directors of the companies participating in the division must issue a decision regarding the division with reference to at least (i) the date the division will commence, (ii) the date of the Conversion Balance Sheet and (iii) the manner in which the assets of the company being divided will be assessed.
- The company being divided must take inventory in order for the Conversion Balance Sheet (“CBS”) to be drafted.
- An experts committee must be appointed which must issue a report (“EC Report”) assessing the value of the assets of the company being divided and examining the conditions to be included in the DDA.
- The CBS is drafted and submitted for approval to the Board of Directors of the company being divided and to that of the existing recipient company.
- The Board of Directors of each of the companies involved in the division must draw up a detailed report (“Explanatory Report”) which explains and justifies, from a legal and financial perspective, the Draft Division Agreement and in particular the exchange ratio.
- The Board of Directors of each of the companies involved in the division prepare the Draft Division Agreement (“DDA”) and issue a decision approving the DDA and authorizing the person who will sign the DDA on their behalf.
- The DDA is signed by the representatives of the companies involved. The DDA is subsequently filed with each party’s Company Registry and then published in the Government Gazette as well as in one financial newspaper.
- The General Meeting of Shareholders of the company being divided and that of the existing recipient company must issue decisions regarding the following: (i) the approval of the DDA and the relevant Explanatory Reports; (ii) the increase of share capital, (iii) the amendment of the recipient’s Articles of Association, (iv) the incorporation and approval of the Articles of Association of the new AE and (v) the appointment of the persons who will be authorized to undertake all further actions for the completion of the division.
- The representatives of the company being divided and that of the existing recipient company sign the notary deed before a notary public, which is then filed
with the Company Registry, together with copies of the above decisions of the General Meeting of Shareholders.

- The procedure is complete when the Company Registry issues a decision approving: (i) the division; (ii) the increase of share capital of the existing recipient company and (iii) the incorporation and the Articles of Association of the new AE.

- Capital concentration tax equal to 1% and the special duty in favour of the Competition Committee amounting to 0.1%, both calculated on the initial share capital of the new AE and the increase of share capital of the existing recipient company, must be paid.

What are the main tax incentive laws applicable to divisions?

The main laws providing tax incentives for divisions of AEs are Law Decree 1297/1972 (extending to divisions of AEs by virtue of Art. 22 of Law 1828/1989) and Law 2166/1993.

What tax incentives are provided under laws 1297/1972 and 2166/1993?

Law Decree 1297/1972, which has been extended on numerous occasions, expires on 31 December 2011 pursuant to Law 3746/2009 (Art. 79 par. 1). It is likely that it will be extended again.

Companies applying under Law Decree 1297/1972 have the following tax incentives:

- The capital gain resulting from the division is not subject to Greek income tax at the time of the division (tax deferral). The gain must be recorded in special accounts of the recipient companies. The capital gain is subject to income tax upon the dissolution of the recipient companies (unless the dissolution occurs by virtue of another conversion pursuant to Laws 1297/1972 and 2166/1993);
- The following are exempt from all Greek taxes, stamp duty and duties in favour of the Greek State:
  a. the division agreement;
  b. the contribution and transfer of all assets and liabilities from the company being divided to the recipient companies;
  c. any act, deed, or agreement regarding the contribution and transfer of all assets and liabilities, including rights, real rights and obligations, from the company being divided to the recipient companies;
  d. the decisions of the companies participating in the division and any other decision, act or deed required for the completion of the division or the incorporation of a new company;
  e. the publication of decisions in the Greek government gazette;
  f. the transfer or registration of the above acts;
- The sale, transfer and registration of real estate from the company being divided to the recipient companies is exempt from all Greek taxes, stamp duty and duties in favour of the Greek State on the condition that the real estate will be used by recipient companies for at least five years from the division.

Companies applying under Law 2166/1993 have the same tax incentives as above, with the exception of the capital gains, as no capital gains arises if the division is carried out under Law 2166/1993. This is because the assets and liabilities are consolidated.
What should one know when selecting between law 1297/1972 and 2166/1993?

- When deciding between law 1297/1972 and 2166/1993, the following should be taken into consideration:
- Under both laws, the recipient companies must have a paid up share capital of at least €300,000.
- Under law 1297/1972, companies must have drawn up at least once financial statements for a 12 month period or more (this applies to the company being divided and the existing recipient company); such obligation does not exist in the case of Law 2166/1993.
- Under law 1297/1972, assessment of the assets of the company being divided must be carried out by the Special Assessment Committee of Art. 9 of Law 2190/1920. In the case of Law 2166/1972, the assessment is undertaken by a certified auditor.
- The shares of the recipient companies, corresponding to the value of the contributed capital must be registered and 75% of these shares must be non-transferable for five years, starting as of the date of the division.
- The procedure under Law 2166/1993 is shorter and simpler than that of Law Decree 1297/1972.
What types of non-listed shares do Greek société anonymes have?

Greek codified company statute 2190/1920 provides for two basic forms of non-listed shares in Greek société anonymes: (i) bearer shares and (ii) registered shares. When purchasing non-listed shares, the buyer should request a copy of the company’s Articles of Association (AoA), which stipulate the type, number and nominal value of the shares that have been issued by the company. Registered shares are issued in the name of a particular shareholder. In this case, the transfer of the particular shares requires that the name of the shareholder be prescribed on the share certificate itself. In the case of bearer shares, the name of the owner of the shares is by definition not stipulated on the share certificate itself.

Are companies obligated to issue share certificates verifying ownership of shares?

Companies are obligated to issue share certificates for bearer non-listed shares. If the company has registered non-listed shares, the AoA may preclude or limit its obligations to issue share certificates. In this case, the AoA determine the manner in which the shareholder’s capacity is proven in order for the rights deriving from the shares to be exercised. In the case the AoA do not contain a relevant provision, as well as in any other case in which share certificates are not issued, the proof of the shareholder’s capacity takes place on the basis of the data contained in the shareholder’s book or any temporary certificates issued and, if necessary, the documents in the possession of the shareholder.

The above share certificates may embody one or more non-listed shares. In the latter case, the certificates become less marketable. Shareholders are allowed to ask that existing share certificates be replaced by others embodying fewer shares if this is permitted in the AoA. Instead of share certificates, temporary share certificates may be used for a predefined period of time until the share certificates are issued. If this is the case, the transfer of shares is effected by virtue of the transfer of these temporary share certificates.

How are bearer non-listed shares transferred?

Transfer of bearer non-listed shares is effected by virtue of an agreement concluded between the seller and the buyer regarding the transfer of the seller’s shares and the delivery of the share certificates or the temporary share certificates from the seller to the buyer that embody the said shares. Possession of the share certificates is sufficient
evidence for the holder to prove that he/she is the owner of the shares, such evidence being able to be brought forth both before the company as well as before third parties. As concerns the company, the holder of the share certificates is entitled to exercise the shareholders’ rights attached to the certificates. The exercise of these rights does not require registration in the books of shares or notification to the company. The burden of proof that the holder of the share certificates is not the owner lies with the company. As concerns third parties, the presumption of possession means that it is possible for a bona fide third party to validly acquire ownership from a person not legally possessing the shares, if the third party did not have the knowledge of the fact that the seller did not have ownership of the share certificates.

How are registered non-listed shares transferred?
The sale of registered non-listed shares is finalised vis-à-vis the company when the agreement between the buyer and the seller for the transfer of shares is recorded in the shareholders’ book and the book is signed by both the seller and the buyer. Ordinarily and unless the AoA provide otherwise (i.e. the AoA may preclude or limit the company’s obligations to issue share certificates), following the registration of the sale in the shareholders’ book, a new share certificate is issued in the name of the buyer or a notation is prescribed on the seller’s existing share certificate(s). The notation must include the buyer’s name, his/her/its registered address or residence, and the occupation and nationality of both the buyer and the seller. The same data is registered in the shareholders’ book.
The delivery of the share certificates from the seller to the buyer is sufficient for the sale of shares to be effected between them. However, such sale is valid vis-à-vis the company only when the transfer of the said shares is recorded in the shareholders’ book, at which time the buyer has the right to exercise his/her/its shareholder’s rights.

Does the transfer of non-listed shares require a written agreement?
According to Greek civil and company law, the sale and transfer of bearer and registered non-listed does not require the conclusion and execution of a formal agreement. Notwithstanding the above, Greek tax laws require that for a transfer of bearer or registered non-listed shares to be valid, it must be concluded and executed exclusively by virtue of a notary deed or a private document certified by the relevant tax authorities. Acquisition of such shares in contravention of the above renders the sale null and void and the buyer does not acquire any legal rights such as the right to dividend, participation in general meetings, transfer of shares, etc. Further details regarding the procedure before the Greek tax authorities are set out below.

Is the sale of Greek non-listed shares subject to Greek income tax?
According to the Greek Income Tax Code, the sale of non-listed shares is subject to 5% Greek income tax payable before the execution of the share purchase agreement (in the form of a notary deed or a private agreement). The income tax is calculated on
the higher amount between the contractual transfer price and the “minimum deemed selling price”, as computed on the basis of a specific formula provided in Article 13 par. 2 of the Greek Income Tax Code. If the sale price mentioned in the sales agreement is higher than the result produced by the above method, then the tax is calculated on the price cited in the sales agreement.

**Is the sale of Greek non-listed shares subject to other Greek income taxes?**

The transfer of shares is exempt from stamp duty and Value Added Tax (VAT). In addition, no excise, transfer or other indirect taxes apply.

**How is the “minimum deemed selling price” calculated for Greek income tax purposes?**

The “minimum deemed transfer price” for the sale of shares is calculated on the basis of the company’s net equity on the previous day of the sale increased by the “return on the company’s net equity” during the last 5 years prior to the transfer. The return on equity is the ratio calculated between:

- the company’s average total net income (before taxes) in the last 5 years (i.e. before the transfer), as set out in the relevant balance sheets; and
- the company’s average net equity recorded during the same period. If the company has drawn up less than five (5) balance sheets, the company takes into account the balance sheets that have been drawn up.

When calculating the net equity of a company for Greek income tax purposes, the Greek Income Tax Code takes into consideration the rate of return of the company’s net equity according to the return the last 5 years when it is positive (by adjusting the net equity upwards accordingly) but it does not take it into consideration when it is negative. In addition to the above, one must also take into account that, according to decision no. POL1077/31.5.2010 issued by the Greek Ministry of Finance, if a company maintains its financial statements according to the International Accounting Standards (IAS), the company’s aforementioned financial information is calculated according to Greece’s tax rules and not the rules set out by the IAS.

The company’s above net equity is increased by any difference between the objective value of the company’s real estate (if such exists) and the net book value. The resulting amount is divided by the number of shares existing at the time of the transfer.

**Is the 5% Greek income tax final?**

If the seller is a Greek société anonyme, a limited liability company or a branch of a foreign company, the tax paid does not extinguish the company’s tax liability if a gain is realized on the sale of the shares. In this event, the 5% tax is considered an advance tax which can be offset against the company’s annual corporate income tax liability. If, however, no gain is realized from the sale of the shares, the Greek tax authorities are likely to disallow the offsetting of the 5% tax against the annual corporate income tax liability. In particular, if the Greek company or a branch of a foreign company selling
the shares records a loss from the sale of the shares, the 5% tax paid cannot be credited against its annual corporate income tax liability and it cannot be used as a tax deductible expense.

If the seller is a Greek individual or partnership, the 5% income tax extinguishes the seller’s tax liability in Greece for the income generated from the sale of the shares.

What is the tax treatment for foreign residents?

Without prejudice to the replies given in Question 13, foreign individuals or companies are also subject to the 5% income tax, which extinguishes the seller’s tax liability in Greece for the income generated from the sale of the shares. In this case, the foreign person will be required to register in Greece for tax purposes, obtain a Greek tax identification number, pay the tax and then deregister for tax purposes, if required.

Can a foreign resident receive a tax exemption from the 5% income tax?

The following should be taken into consideration when a foreign company or individual sells shares in Greece:

If a foreign company sells shares in Greece, according to circular POL 1156/12.5.2000 issued by the Ministry of Finance, the foreign company can apply to be exempt altogether from the 5% income tax imposed on the sale of shares. In particular, the said circular stipulates that the sale of non-listed shares in Greek société anonymes is not subject to 5% income tax when the company selling such shares is a tax resident of a country with whom Greece has signed a bilateral treaty for the avoidance of double taxation and the seller does not have a permanent establishment (PE) in Greece; or it has a PE, but the income from the sale of shares is not attributed to such PE (this does not apply to USA companies). According to bilateral treaties for the avoidance of double taxation, the fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a PE or otherwise), shall not of itself make for either company a permanent establishment of the other.

If a foreign individual sells shares in Greece, the foreign individual can also apply to be exempt altogether from the 5% income tax imposed on the sale of shares, when the individual selling such shares is a tax resident of a country with whom Greece has signed a bilateral treaty for the avoidance of double taxation and the relevant treaty contains a provision relating to “Other Income”, as this is set out in Article 21 of the model tax treaty. According to the model tax treaty, income of a resident of a Contracting State, wherever arising, not dealt with in the other Articles of the treaty, is taxable only in that State (i.e. in the state where the individual is a tax resident). Nonetheless, not all tax treaties signed by Greece contain such a provision.

What is the procedure before the Greek tax authorities for finalizing the sale of shares when the seller is entitled to be exempt from the 5% income tax?

As concerns the tax side of the sale, the following procedure must be followed:
(a) The seller must calculate the minimum deemed transfer price (as per the specific formula stipulated in article 13 par. 2 of the Greek Income Tax Code).
(b) The seller must file the relevant income tax return. Together with the income tax return, the seller must also file the following documents:

- Copies of the balance sheets of the company for the last five years.
- Copies of the company’s trial balance of first-degree accounts of the day prior to the day of the transfer or, if not feasible, of the month prior to the transfer of the shares.
- Information regarding the net assets of the company the day before the tax return for the transfer of shares is filed.
- Information on whether an increase or decrease of the company’s share capital has taken place between the year end and the day before the tax return for the transfer of shares is filed.
- The latest real estate tax return filed with the tax authorities or if there were no obligation to file such a return the objective values of any real estate property owned by the company. In the case the company does not own any real estate property, a statutory declaration pursuant to Law 1599/1986 signed by the company should be completed, stating that it does not own any real estate.
- Draft share purchase agreement.

(c) Based on the above information, the seller must pay the income tax (payable prior to the signing of the share purchase agreement and the transfer of the shares) at his/her/its tax authority.

(d) When the income tax is paid, the share purchase agreement can be executed and then filed and authenticated with the company’s competent tax office. The amount of income tax paid and the receipt issued by the Greek tax authorities must be explicitly recorded in the share purchase agreement.

**What is the procedure before the Greek tax authorities for finalizing the sale of shares when the foreign seller is not entitled to be exempt from the 5% income tax?**

If the seller is entitled to be exempt from the 5% income tax, the above procedure does not apply. In this case, the following procedure must be followed with the tax authority where the company whose shares are being sold has its registered address:

- The foreign seller must file a tax residence certificate, certified from his/her/its tax authorities in the country of residence (with whom Greece has signed a bilateral treaty for the avoidance of double taxation) requesting that the Greek tax authorities grant the seller tax exemption.
- Three copies of the signed share purchase agreement in Greek or officially translated into Greek (if the share purchase agreement is concluded in any other language) must be filed.
- Once the tax exemption is issued, the signed share purchase agreement is authenticated with the company’s competent tax office.
How are listed shares transferred in the Athens Stock Exchange and taxed?

The transfer of shares listed on the Athens Stock Exchange is effected according to the rules of the ASE. All sales of listed shares are taxed at a flat rate of 0.2% on the price of sale.
What is a “takeover bid” and which is the scope of application of the “takeover” legislation?

Greece transposed the EC Directive 2004/25/EC on takeover bids into Greek law with the enactment of Law 3461/2006 (“Takeover Bid Law”), which applies to “takeover bids” launched for the acquisition of the securities of a company with registered seat in Greece (“Target”), provided that the total or part of the Target’s securities have been admitted to trading on a regulated market in Greece, subject to the provisions of the Takeover Bid Law and the decisions of the Hellenic Capital Market Commission (“HCMC”). In particular, according to the Takeover Bid Law, the notion of a “takeover bid” refers to the public offer made to the holders of the securities of the Target by another company or natural person (“offeror”) to acquire all or part of such securities. A takeover bid may either be mandatory or voluntary.

When is the mandatory takeover bid obligation triggered?

The mandatory takeover bid obligation is triggered when the percentage participation of a person exceeds by way of acquisition of a Target’s securities, by any means whatsoever (either directly or indirectly, acting on its own or through other persons or in concert with other persons acting for its account), the limit of the 1/3 of the total voting rights in the Target (in any way i.e. either directly or indirectly, acting on its own or in concert with other persons acting for its account). Such person is therefore required, within twenty (20) days from such securities’ acquisition to launch a mandatory takeover bid for all of Target’s securities, by offering a fair and equitable consideration.

The foregoing obligation also applies to any person who is a holder of more than 1/3 without exceeding 1/2 of the total of the voting rights of the Target and who acquires within six (6) months, directly or indirectly, on its own or in cooperation with other persons acting for its account or in concert with it, securities of the Target which represent more than 3% of the total voting rights of the Target.

In order to calculate the percentage limits above, the term “voting rights” acquired or held by the responsible person(s) (i.e. directly or indirectly by the offeror on its own and in cooperation with other persons acting for its account or in concert with it), includes the voting rights which are acquired or held under a contract for the constitution of pledge, usufruct, custody or management of securities, provided that their holder can exercise such rights, at its discretion. For the calculation of the aforementioned limits, the total of the voting rights is taken into account, the exercise of which is not forbidden according to applicable legislation relating to the purchase of own shares (for example, where a company buys its own shares, the voting rights attached to those shares are not calculated for the determination of the threshold to submit a takeover bid).

1. As per the definition included in the Takeover Bid Law for persons acting in concert.
In addition, if, as a result of a corporate transformation (for example, merger or division), the security holders of a Target are receiving as remuneration shares or units or other securities that are not listed, or cash, the said transformation, with the exception of a transformation being resolved by at least 95% of the share capital of the Target, is not allowed unless a takeover bid has been priory addressed to the security holders of the Target for the acquisition of their securities as a whole (“cash-out merger”).

Are there any dispensations from the obligation to launch a mandatory takeover bid?

The obligation to launch a mandatory takeover bid does not apply if:

a. a third person holds a higher percentage of voting rights than the offeror or persons acting for its own account or in concert with the offeror;

b. the securities of the Target have been acquired following a voluntary takeover bid launched according to the provisions of the Takeover Bid Law to all holders of Target’s securities and for the entirety of their holding, provided that the consideration of the voluntary takeover was fair and equitable, as required for mandatory takeover bids (without the need for payment of a cash consideration);

c. the acquisition of securities is the result of a transfer due to parental donation or hereditary succession;

d. the offeror or persons acting for its own account or in concert with the offeror have acquired a percentage of voting rights which does not exceed the aforementioned thresholds of 1/3 by more than 3% of the total voting rights and undertakes in writing the obligation:
   i) to dispose the securities required in order to fall below the relevant threshold, within six (6) months from the acquisition; and
   ii) not to exercise the voting rights attached to the securities that shall be disposed within that six-month period.

e. the securities have been acquired through the exercise of a pre-emption right under a share capital increase by the offeror or persons acting for its own account or in concert with the offeror, as existing securities holder(s), provided that the exercise of the pre-emption right is not accompanied by the abolition of the other shareholders’ pre-emption rights. The same applies if the existing shareholder declares during the exercise of his pre-emption right, that, in addition to the new securities allocated to him as beneficiary existing shareholder, he intends to acquire additional unsubscribed securities, provided the Target’s board of directors distributes the unsubscribed securities pro-rata, according to the existing shareholders’ declarations;

f. the acquisition of securities is the result of a merger between companies which are affiliated, in accordance with articles 42e par 5 or 96 par 1 of the Greek Codified Law 2190/1920 on companies limited by shares (sociétés anonymes) (“Company Law”);

g. a privatisation procedure for the Target is in progress;

h. the acquisition of securities is part of a corporate restructuring of the Target, in accordance with the new Greek Insolvency Code (chapter 6 of Law 3588/2007, as amended on September 2011).

Is it possible to set defined thresholds in a voluntary takeover bid?

An offeror launching a voluntary takeover bid for the acquisition of securities of a Target is required to acquire all tendered securities, unless there is a defined maximum number of securities that the offeror undertakes to accept. The offeror may set a minimum number of securities that have to be tendered in order for the bid to be valid. It is possible to submit
a voluntary takeover bid for the acquisition of a Target’s securities which are admitted to trading in a regulated market operating in Greece, which, however, do not carry voting rights. In this case the provisions of the Takeover Bid Law are equally applicable.

**How is the consideration calculated in case of a mandatory or a voluntary takeover bid?**

In case of a takeover bid, the offeror may offer by way of consideration securities, either admitted or not admitted to trading on a regulated market, or cash or a combination of both. In case of a mandatory takeover bid, a cash alternative must be provided to the securities holders accepting the bid.

If the offeror or one of the persons acting for its account or in concert with it acquires securities of the Target (following the disclosure of the takeover bid and prior to the end of the acceptance period) at a price higher than the offered with the takeover bid consideration, then the offeror is required to increase the offered consideration, so that it is not less than the higher price paid by the offeror or by the persons acting on its account or in concert with it during the same period².

In case of cash consideration, the offeror must procure an affirmation by a credit institution, established in Greece or in another member state, ensuring that the offeror has sufficient means to pay the total consideration in cash. In case where the consideration offered consists of securities, the offeror procures an affirmation provided by an investment services company or a credit institution established in Greece or in another member state, stating that the offeror possesses the securities offered as consideration or, that it has taken any possible measure to ensure the provision of the consideration.

In particular, in the case of a mandatory takeover bid, an equitable and fair consideration is a cash consideration paid per share, which cannot be less than:

- a. the average market price of the Target’s securities over the six (6) month period preceding the date that the offeror was required to launch the mandatory takeover bid; or
- b. the highest price at which the offeror or one of the persons acting for his account or in concert with the offeror acquired Target’s securities, over the six (6) month period preceding the date on which the offeror was required to launch the mandatory takeover bid.

**Are there any deviations from the calculation of the consideration above in case of a “cash-out merger”?**

Yes. According to the HCMC resolution 17/427/9.5.2007 (“HCMC Resolution”), the minimum consideration in case of “cash-out merger” is calculated as follows:

- The Cash consideration offered cannot be less than:
  - a. the average market price of the Target’s securities over the six (6) month period preceding the date that the offeror was required to launch the mandatory takeover bid; or
  - b. the highest price at which the offeror or one of the persons acting for his account or in concert with the offeror acquired Target’s securities, over the twelve (12) month period³.

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2. For the calculation of the offered consideration, acquisitions of any of the Target’s securities made by a credit institution or an investment services company, for the purposes of meeting their obligations undertaken within the course of their duties as i) special market makers in a regulated market, ii) systematic internaliser or iii) member of the clearing and settlement systems responsible for the completion of the clearing of the transactions, are not taken into consideration. Same provision applies for the calculation of the cash consideration in the case of a mandatory takeover bid.

3. The 12-month period for the calculation of the consideration was initially provided for in art. 9 of the Takeover Bid Law (and was repeated in the HCMC’s Resolution for the “cash-out merger” dated 09.05.2007). However, the foregoing article 9 of the Takeover Bid Law was amended on 31.03.2011 by virtue of Law 3943/2011,
preceding the date on which the offeror was required to launch the mandatory takeover bid;
c. the price, or in case of range in prices, the average price that is determined for the
Target’s securities as fair value by a special evaluator appointed by the HCMC.

The Securities consideration offered can be comprised of listed securities or a combination
of listed securities and cash, provided that:
a. such consideration fulfils the calculation criteria of the cash consideration above at the
date of launching of the takeover bid; and
b. the securities’ holders have the discretion to choose the cash consideration instead of
the securities one.

What information must be disclosed to the public with reference to the takeover bid? Which
is the minimum content of such announcement?

The announcement to the public must at least include the following information:
a. the corporate name and seat of the Target;
b. the name and address of the offeror or if offeror is a legal entity, its corporate name, its
corporate form, its seat and address;
c. the corporate name and address of the adviser of the offeror;
d. the securities or class of securities that are subject to the takeover bid;
e. the maximum number of securities that the offeror undertakes (in case of a voluntary
takeover bid) or is required (in case of a mandatory takeover bid) to acquire, the
percentage of the share capital of the Target that the securities that are subject to the
takeover bid represent, as well as the percentage of the total securities of the same class;
f. the consideration offered for each security;
g. the minimum number of securities which, in case of a voluntary takeover bid, must be
accepted so as the bid to be valid;
h. the number of Target’s securities already held directly or indirectly by the offeror or by any
of the persons acting in concert or on the account of the offeror;
i. any intention of the offeror to acquire, during the period starting from the disclosure of the
takeover bid until the end of the acceptance period, additional Target’s securities, outside
the framework/process of the takeover bid.

What if a competing takeover bid emerges?

Withdrawal of a voluntary takeover bid is possible if competitive bids have been launched.
The securities holders who have already accepted the voluntary takeover bid may accept
the competing bid only if they have previously recalled their acceptance of the previous
voluntary takeover bid. It is not possible to revoke a mandatory takeover bid. The voluntary
takeover bid may also be revoked following receipt of HCMC’s permission in case of a sudden
and unexpected change of events, which renders the continuation of the bid extremely
burdensome for the offeror.

Can minority shareholders be squeezed out? If so, what steps must be taken and what is the
time frame for such process?

“Squeeze-out rights” enable a successful offeror to purchase compulsorily the securities of
the remaining minority securities holders (residual minorities), who have not accepted the

changing the 12-month period for the calculation of the cash consideration for mandatory bids to 6 months.
There has been as of yet no amendment, however, of the HCMC’s Resolution to reflect the change.
bid. According to the Takeover Bid Law, the “squeeze-out right” is triggered when an offeror, following submission of its takeover bid to acquire all of Target’s securities, ends up holding securities representing at least 90% of the total voting rights in the Target, in which case, it becomes entitled to require the transfer at a fair price of all remaining Target’s securities from the rest of the securities holders not accepting its initial bid.

For the purposes of ensuring the equal treatment of the remaining securities holders, the fair price for the acquisition of the remaining Target’s securities must be of the same nature and at least equal to the consideration offered in the takeover bid. In any case, minority holders have the right to require payment in cash as an alternative. Such offered consideration, however, must be reasonable and fair. The fairness of the offered consideration could be challenged by the minority securities holders before courts by way of filing a petition within six (6) months, following the completion of the squeeze-out process.

In order to exercise the “squeeze out right”:

- the offeror is required to submit to the HCMC a relevant request which is also notified to the Target. The request must refer to the amount and type of the offered consideration and must be accompanied by a certificate provided by a credit institution – established either in Greece or in another EU member state- ensuring the eligibility of the offeror to pay in full and in cash the consideration for the acquisition of all remaining securities;
- following receipt of the squeeze-out request by the Target, the offeror is required to disclose within the next working day to the public, its request to acquire the remaining Target’s securities; and
- the HCMC must issue its approval decision, after having ascertained the possession by the offeror of securities representing 90% of the total voting rights of the Target and the certificate of the credit institution, proving for the obligation of the offeror to pay immediately to the remaining securities holders the total sum of the offered consideration;
- the offeror is required to publish HCMC’s resolution and the payment process of the offered consideration to the minority securities holders within the next business day.

Following the aforementioned procedure, the offeror is required to deposit the consideration for the acquisition of the remaining Target’s securities with the Central Securities Depository within three (3) business days from the settlement date of the last trading day of such securities listed on the Athens Exchange (“ATHEX”). Upon confirmation by the Central Securities Depository of the payment of the consideration for the acquisition of the remaining Target’s securities in full and subject to the payment of all other fees and expenses, the offeror is registered as the new owner of the securities.

The “squeeze out right” regulated by the Takeover Bid Law must be exercised within three (3) months following the end of the takeover bid’s acceptance period, provided that the relevant intention for the exercise of such right was included in the Information Memorandum.

For completeness, the Company Law provides for an additional “squeeze out right” applying to both listed and non listed Greek sociétés anonymes, without prejudice to the provisions of the Takeover Bid Law. This additional Company Law “squeeze out right” is triggered when, following the incorporation of the company, a shareholder acquires and holds at least 95% of its share capital, in which case it has the right to proceed to the acquisition of the remaining shares of the minority shareholders for a consideration corresponding to their “real” value. This right must be exercised within five (5) years from the date that the majority shareholder reached the 95% threshold. The valid exercise of this Company Law “squeeze-out right”
entails the submission of a relevant petition to the Court of First Instance by contrast to the Takeover Bid Law “squeeze-out right” that involves the submission of a request to the HCMC.

What is the “sell-out right” and when is it triggered?

“Sell-out rights” enable minority securities holders to require the majority shareholder of a Target (being the successful offeror) to purchase their securities at a fair price. According to the Takeover Bid Law, the “sell-out right” is triggered when an offeror, following the successful takeover bid, ends up holding securities representing at least 90% of the total voting rights in the Target, in which case it is required to purchase through ATHEX all those securities that shall be offered by the holders of the remaining Target’s securities by offering a cash consideration equal to the consideration of the bid, within a period of three (3) months following the disclosure of the result of the takeover bid. Upon request of the holders of the remaining securities of the Target, the consideration offered may be in the form of securities, if such were the subject of the takeover bid and are equal to the consideration offered during the takeover bid.

The Company Law provides as well for an additional “sell-out right” applying to both listed and non listed Greek sociétés anonymes, without prejudice to the provisions of the Takeover Bid Law, granting the right to the minority shareholders to request the acquisition of their shares by the Target’s majority shareholder. This additional Company Law “sell-out right” is triggered when, following the incorporation of the company, a shareholder acquires and holds at least 95% of its share capital, in which case one or more of the residual shareholders may request through a petition to the Court of First Instance the acquisition of its/their shareholding participation in the Target by the majority shareholder. This “sell-out right” must be exercised within five (5) years from the date that the majority shareholder reached the 95% threshold.
FINANCIAL CONTRACTS
Introduction

Many manufacturers, in addition to direct sales to the end consumer, resort to the option of marketing via third persons or companies, such as an Agent or a Distributor, since such local contractual partners are more familiar with the local conditions, know of a more effective local marketing strategy and can even sell the goods more cost-effective and efficiently. As a result, Commercial Agency and Distribution Agreements are considered an important sector of commerce in Greece.

More particularly:

AGENCY AGREEMENT

What is an Agency Agreement?

An Agency Agreement is a service agreement between the Agent and the Principal. Through the Agency Agreement the Agent as the self-employed commercial (independent) intermediary undertakes the continuing authority to negotiate on a permanent basis the sale or the purchase of goods on behalf of the Principal, or to negotiate and conclude such transactions on behalf of and in the name of the Principal, in consideration of a fee in the form of a commission.

Legal Framework of Agency Agreements

Agency Agreements are governed by the Presidential Decree 219/1991 on “commercial agents” (hereinafter “PD 219/1991”), transposing in Greece Directive 86/653/EEC. PD 219/1991 has been lastly amended by Law 3557/2007 and is now in force. The said amendment extends the application of PD 219/1991 to further categories of commercial contracts, while it also provides that the provisions of the PD 219/1991 are applicable even when the contract in question was not concluded in writing.

Which is the main content of an Agency Agreement?

As in any contract, the will of the parties must have coincided as to the essentials of their relationship. Such essentials will determine the extent of the agreement, how this agreement will be exercised, as well as the commission or other remuneration payable. Normally however, the written agreement will include many more provisions to regulate the relationship of the parties, especially to the extent it is not regulated by law. The typical clauses in such contracts are the preamble, the definitions and clauses relating to the territory, the commission and the manner of its payment, the obligations of the Principal and of the representative, intellectual and industrial property, terms of exclusivity, commission, non-competition, duration and termination, lack of indemnity, applicable laws and arbitration, and the typical miscellaneous clauses, such as those dealing with notices and severability.
What are the basic aspects of an Agency Agreement?
As already mentioned, PD 219/1991 does not require that the Agency Agreements should be drawn up in writing in order to be affective.

What are the main obligations of the Agent arising from an Agency Agreement?
The Agent has the following obligations:
- to look after his Principal’s interests;
- to make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;
- to communicate to the Principal all the information (e.g. market’s evaluations, supply and demand, prices, quality and availability of products); and
- to comply with reasonable recommendations given by the Principal.

What are the main obligations of the Principal arising from an Agency Agreement?
In general, both the Agent and the Principal are required to act with due diligence, precision, honesty and good faith in the conclusion, promotion and execution of their commercial acts. Specifically, the Principal must:
- place at the disposal of his Agent with the necessary documentation relating to the goods concerned (i.e. price lists, leaflets etc.);
- obtain for his Agent the information necessary for the performance of the Agency Agreement;
- inform the Agent within a reasonable period of his acceptance, refusal and any non-execution of a commercial transaction;
- reimburse the Agent of everything the latter has spent to achieve an orderly performance of the mandate.

What is a commission?
Under the provisions of PD 219/1991, the Agent is entitled to the agreed commission. In the absence of any agreement on this matter, the Agent shall be entitled to a reasonable remuneration.

When and how is an Agency Agreement terminated
Agency Agreements may be entered into for a fixed term or for an indefinite term. In the former case, the agreement is automatically discharged upon expiry of the agreed duration term. In the latter case, no expiry date has been included in the agreement and same may be terminated ex nunc, following notice which must be communicated to the other party within a fixed time limit.
Also, an Agency Agreement may be terminated at any time, on serious grounds that do not justify further performance of the Agency Agreement in light of good faith (force majeure). If the termination was notified at an inappropriate time without serious grounds the party who terminated it shall be liable to compensate the prejudice caused thereby to the other while the Agency contract shall be effective.

What are the consequences of terminating an Agency Agreement?
Upon termination of the Agency Agreement, be it for a fixed or for an indefinite term, the right to compensation of the Agent arises if and to the extent that:
he has brought the Principal new customers or has significantly increased the volume of business with existing customers and the Principal continues to derive substantial benefits from the business with such customers, and
the payment of this indemnity is equitable having regard to all the circumstances and in particular, the commission lost by the Agent on the business transacted with such customers.
The amount of indemnity due, following the expiry of the Agency Agreement, cannot exceed an amount equivalent to the annual average of commissions, received by the Agent, during the last five years.
Agent’s claim to this indemnification is subject to five years prescription, provided he notifies the Principal within one year from the termination of the Agency Agreement to this effect.

What happens to the non-competition term of an Agency Agreement after termination?
The non-competition obligation following the expiry of the Agency Agreement is valid for one year if and to the extent it has been agreed in writing and it relates to the geographical area (save this sector, there exist no further restrictions) or the group of customers and the geographical area entrusted to the Agent and to the kind of goods covered by his Agency under the contract.

Which is the applicable law in Agent Agreements?
The Agency Agreement is governed by the law chosen by the parties. The choice must be explicitly expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. However, the fact that the parties have chosen a foreign law shall not prejudice the application of rules of the law at the country which cannot be derogated from by the Agreement, called “mandatory rules”.

In case of a dispute would the Principal be exposed to local jurisdiction?
In general, all agreements in private law (including the one in question) can be freely subject to arbitration, as long as the arbitration is agreed in written (also by a written arbitration clause included in the Agency Agreement).
If disputes are not referred to arbitration by virtue of a valid clause in the contract, the jurisdiction of the local courts is defined wither pursuant to the rules of the Greek Code of Civil Procedure or, if the one of the litigation parties is domiciled within the EU, pursuant to EU Regulation 44/2001. Local jurisdiction is defined, in Principle, by the domicile of the parties. Consequently, a lawsuit against a Principal domiciled abroad cannot be brought before the Greek courts. If, however, Greece is considered as the place of performance of the agreement, the Greek courts have jurisdiction and the Principal can be sued in Greece.

Tax considerations regarding the Agent
If both the Agent and the Principal are established in Greece, the structure of their relationship is fairly uncomplicated from the tax point of view, because both constitute commercial enterprises and, as such are subject to taxation in Greece. This means that they must keep official books, as required by commercial laws and tax legislations (“Books and Data Code”) and file tax returns, withhold taxes and pay them to the Greek State.
If however the Principal is established in another country, the nature of the relationship between the Principal and the Agent is of special importance, as it may be the source of significant tax problems for the Principal.
General tax legislation provides that a foreign business is subject to corporate income tax in Greece, either for the income deriving from sources within Greece or as a result of its permanent establishment in Greece. An enterprise acquires legislation, if it carries on business in Greece or offers services though a representative, who is authorized and is able to negotiate and to conclude contracts in the name of the Principal. Therefore, if the documents for the sale of goods or the offering of services to Greek customers are signed by the Agent based on a general authorization, the profit from this transaction will be taxed in Greece. If they are signed on behalf of the Principal the profit would be considered as earned from sources outside of Greece.

This situation is different in the case of bilateral treaties signed between Greece and various other countries for avoidance of double taxation. Therefore, it must be examined in concreto. As for the Value-Added Tax (VAT) the Principle is charged with VAT on commissions that it pays. The Agent collects the VAT on his commission and pays it to the Greek State, regardless of whether the Principal is headquartered in Greece, in an EU member state, or in a third country.

DISTRIBUTION AGREEMENT

What is a Distribution Agreement and how this Agreement differs from the Agency Agreement?

Distribution Agreement is a continuous contractual agreement on the basis of which, the Supplier is obliged to sell exclusively the products to the Distributor for the particular territory while the latter undertakes the obligation to purchase Supplier’s products exclusively, following his instructions and commercial terms.

In the Distribution Agreement, contrary to the Agency Agreement, the Distributor purchases the products from the Supplier and then sells them on the customers in his own name and for his own account. There is no direct legal relationship between the Distributor and the Supplier, and as a result the Distributor bears the risk of the end consumer’s insolvency and all transactions under sales law.

Legal Framework of Distribution Agreements?

Unlike the Agency, Distributorship is not a legal relationship specifically regulated by Greek law or as an identified legal institution. However, according to article 14 of Law 3557/2007 (as above mentioned) the provisions of PD 219/1991 apply on an analogous basis to Distribution Agreements, subject to specific conditions- criteria of similarity with the Agency Agreement (see below). These criteria are further analyzed in Decision Nr. 139/2006 of the Greek Supreme Court.

At a secondary level, articles 648ff and 713ff of the Greek Civil Code are also applicable.

Which are the basic criteria of similarity between an Agent and a Distributor?

Indicatively, the Distributor is held as an Agent and PD 219/1991 is applied by analogy, when the Distributor a) acts as part of the other contracting party’s – the producer’s commercial organization, b) contributes to the enlargement of the producer’s group of customers, performing to a significant extent duties comparable to those of an Agent; and c) undertakes the obligation not to compete with the counter-contracting party. Also when the Distributor’s list of customers is known to the counter-contracting party, under the contract and his financial activities and financial benefits are in general the same as those of the Agent.
Which is the main content of a Distribution Agreement?
A standard clause in a Distribution Agreement is that the Supplier will sell to the Distributor, and the Distributor will buy the goods at the prices fixed in the price list (Price Provision). Also, delivery timetables are a matter of agreement between the parties and are a typical clause in a Distribution Agreement. Depending on the kind of goods to be sold to the Distributor, delivery timetables can be an important clause in the contract. In contrast to the Agent, who acts for the Principal, the Distributor is an independent trader and, therefore, is not entitled to recover any expenses he incurs in conducting his business. However, nothing prevents the parties from agreeing that they will share certain expenses or that such expenses will be borne exclusively by the Supplier.

Are there any formalities regarding the Distribution Agreement?
Distribution contracts are not required to be concluded in writing, thus an oral agreement being valid.

What are the main obligations of the Distributor arising from a Distribution Agreement?
Distributors are obliged to purchase the agreed products and to resell them on their own responsibility and risk as well as to protect the interests of their suppliers, in the territory agreed, following their instructions and despite of their commercial independency, while, sometimes, they have to pursue a continuous increase of sales. Additionally, they are often obliged to organize a Distribution network by contracting with other sub-Distributors.

What are the main obligations of the Supplier arising from a Distribution Agreement?
The main obligation of the supplier, in case of an exclusive Distribution Agreement, is to sell his products exclusively to the Distributor in the agreed territory and to continuously support him. Other ancillary obligations can arise from good faith in concreto, taking also into consideration the level of Distributor’s incorporation in supplier’s overall network.

When and how is a Distribution Agreement terminated?
Distributors are obliged to purchase the agreed products and to resell them on their own responsibility and risk as well as to protect the interests of their suppliers, in the territory agreed, following their instructions and despite of their commercial independency, while, sometimes, they have to pursue a continuous increase of sales. Additionally, they are often obliged to organize a Distribution network by contracting with other sub-Distributors. In general, Distributors may undertake obligations of same character and content to those of Agents, running, in addition, the commercial risk.

What are the consequences of terminating an Distribution Agreement?
Indemnification of article 9 of PD 219/1991 was recognized to Distributors only exceptionally, to the extent their commercial position in Suppliers’ Distribution network does not substantially differ from the presumably weak position of Agents (see above the criteria of similarity between an Agency Agreement and a Distribution Agreement). Finally, the compensation payable by suppliers may include the damage sustained by Distributors and in particular the expenses incurred for advertising, marketing and promoting as well as for press announcements and participations in exhibitions, their general operating and organizational costs, their lost profits, the value of stock or spare parts and a fair reparation for moral prejudice in case of tort.
In case of a dispute would the Principal be exposed to local jurisdiction?
Same answer as for the Agency Agreement.

Tax considerations regarding the Distributor?
A foreign Supplier is not exposed to any taxes in Greece. The profit from sales of goods is considered as earned outside of Greece and therefore not taxable in Greece; nor does the mere sale of goods create a permanent establishment in Greece under any circumstances. There are no special taxes relates to a Distributor’s business premises or use taxes. In any import of goods from third countries, VAT is paid at the customs clearance and is deduced subsequently from the VAT corresponding to the sales (outflows) of the Distributor. In case of intra-Community movements of goods (i.e. from an EU member state into Greece) no VAT is paid, but the Distributor is debited and credited with the relevant amount so that the transaction is neutral. Subsequently, when the Distributor sells the goods, he pays to the state the full amount of the corresponding VAT, not having any credit from the acquisition of goods.
How can we define the term FRANCHISING?

Franchising is a system of marketing goods and/or services and/or technology, which is based upon a close and ongoing collaboration between legally and financially separate and independent undertakings, the Franchisor and its individual Franchisees, where by the Franchisor grants its individual Franchisees the right, and imposes the obligation, to conduct a business in accordance with the Franchisor’s concept. The right entitles and compels the individual Franchisee, in exchange for a direct or indirect financial consideration, to use the Franchisor’s trade name, and/or trade mark and/or service mark, know-how, business and technical methods, procedural system, and other industrial and/or intellectual property rights, supported by continuing provision of commercial and technical assistance, within the framework and for the term of a written franchise agreement, concluded between parties for this purpose.

What is exactly the Franchise Agreement?

The realization of franchising is embodied in a written document that is called the “Franchise Agreement” or “the Franchise Contract”. The Franchise Agreement is a document, which includes all the terms to which the two contractual parties, the Franchisor and the Franchisee, have agreed and signed. The Agreement constitutes a legal commitment for both parties, which expresses all the contractual obligations, rights and other considerations, which are going to develop during the co-operation among the Franchisor and the Franchisee.

What are the essential minimum terms of the Franchise Agreement?

The essential minimum terms of the Agreement shall be the following:

- the rights granted to the Franchisor,
- the rights granted to the individual Franchisee,
- the license given by the Franchisor to the individual Franchisee to use the Franchise System,
- the goods and/or services to be provided to the individual Franchisee,
- the obligations of the Franchisor,
- the obligations of the individual Franchisee,
- the terms of payment by the individual Franchisee,
- the duration of the agreement which should be long enough to allow individual Franchisees to amortize their initial investments specific to the franchise,
the basis of any renewal of the agreement,

- the terms upon which the individual Franchisee may sell or transfer the franchised business and the Franchisor’s possible preemption rights in this respect,

- provisions relevant to the right of using by the individual Franchisee of the Franchisor’s distinctive signs, trade name, trade mark, service mark, store sign, logo or other distinguishing identification, since these are the rights under which the Franchisee is licensed to operate the Franchise System and which give him a competitive advantage over those who cannot use the System,

- the Franchisor’s right to adapt the Franchise System to new or changed methods,

- provisions for termination of the agreement,

- provisions for surrendering promptly upon termination of the Franchise Agreement, any tangible or intangible property belonging to the Franchisor or other owner thereof.

What are the main obligations of the Franchisor?

The Franchisor shall:

- have operated a business concept with success, for a reasonable time and in at least one pilot unit before starting its Franchise Network,

- be the owner, or have legal rights to the sue, of its network’s trade name, trade mark or other distinguishing identification,

- provide the individual Franchisee with initial training and continuing commercial and/or technical assistance during the entire life of the Franchise Agreement,

- grant to the individual Franchisee the right to use the Franchisor’s “Franchise Package”, which consists of the Franchisor’s intellectual property rights as well as his know-how,

- not to appoint another Franchisee nor operate himself a retail outlet in a given contract territory,

- update and further develop its products, the business outlook and the operating manual and make these improvements available to all Franchisees.

What are the main obligations of the individual Franchisee?

The individual Franchisee shall:

- devote its best endeavors to the growth of the franchise business and to the maintenance of the common identity and reputation of the Franchise Network,

- supply the Franchisor with verifiable operating data to facilitate the determination of performance, and the financial statements necessary for effective management guidance, and allow the Franchisor, and/or its agents, to have access to the individual Franchisee’s premises and records at the Franchisor’s request and at reasonable times,

- not disclose to third parties the know-how provided by the Franchisor, neither during nor after termination of the agreement,
operate his own shop under the Franchisor’s trade name having the same outlook,
pay a franchise fee and contribute to the common advertising,
buy the contractual products only from the Franchisor or from other suppliers agreed by him, and sell only the contractual products and not other competitive nor supplementary products.

**What is the operational manual?**

The operational manual is certainly one of the most important means of communicating the Franchise System. It should include the necessary information for actually carrying out the Franchise System. Franchisor’s know-how, which is the heart of the Franchise System, should be described in details in the operational manual.

**What does “know-how” mean?**

“Know-how” means a package of non-patented practical information, resulting from experience and testing by the Franchisor, which is secret, substantial and identified.

**Is there a special legal framework for Franchising in Greece?**

No. Greek Law does not contain any legislative or other specific provisions regarding Franchising, nor is any proposed at the present. Under Greek legal system, franchise contracts are subject to the laws and regulations of different legal fields. During the last years, the developing law of the European Community has substantially influenced Greek Law. Greece has generally complied with the Community Directives and Regulations and has moved towards uniformity of law. Now Franchising is being regulated in Greece by the new Commission Regulation (EC) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty to categories of vertical agreements and concerted practices. In addition, some provisions of several Greek Laws can be applied to Franchising, such as Law 3959/2011 “On the Control of Monopolies and Oligopolies and the Protection of Competition”, Law 2239/1994 “On Trade Marks”, Law 146/1914 “Regarding the Unfair Competition”, Law 1733/1987 “On Transfer of Technology, Inventions, Technological Innovations and Establishment of an Atomic Energy Committee”, Law 2251/1994 “For the Consumer’s Protection”, Law 2121/1993 “Intellectual Property”, Presidential Decree 219/1991 “Regarding Commercial Representatives in compliance with the EEC Directive 86/653 of the European Communities Councils” and finally the Greek Civil Code. Nevertheless, in the absence of a well-developed body of Law governing the Franchise relationship, the Franchise Agreement should be as specific as possible in spelling out the respective rights and obligations of the parties.

**Is there a Code of Ethics for Franchising in Greece?**

Yes. In January 1999, the members of the Greek Franchise Association approved the final text of new Code of Ethics for Franchising in Greece. The text is based upon the text of the European Code of Ethics, whose provisions are compulsory for the Code of Ethics of all Franchise Associations of states-members of the European Union. The Greek Code of Ethics has been approved by the European Franchise Federation and includes, in addition to the text of European Code of Ethics, elements which fulfill needs of the Greek business market and regulate peculiar conditions which are found in the Greek Franchise Market. The application of the Code of Ethics is compulsory for the members of Greek Franchise Association.
Governing Law-Disputes. What are the choices of the Parties?

It is likely that some foreign companies will not accept to submit disputes to the jurisdiction of the Greek Courts, because they will fear the partiality of local courts. As an alternative, it is possible to propose that the claimant may elect to sue his opponent before the courts in the jurisdiction of which he has his own domicile or place of business or before the courts in the jurisdiction of which the defendant has his domicile or Company place of business. A third alternative which may be contemplated is arbitration, since this method of dispute settlement presents many advantages in international transactions. The arbitration proceedings can of course take place in Athens and the arbitrators will apply the Greek Procedural Law. The language of the arbitration should be, if possible, a common language possessed by both parties and the arbitrators, so as to avoid translation costs.

Is there a special tax framework for Franchising in Greece?

No. The crucial factor is whether the Franchisor has a permanent seat in Greece or not. Should Franchisor has a permanent seat in Greece, he will be faced by the Greek Tax Authorities as a Greek Franchisor. Should Franchisor has not a permanent seat in Greece, which is the most possible scenario, we have to examine if there is an agreement for the avoidance of double taxation between Greece and the Franchisor’s country. If this is the case, the provisions regarding the taxation of royalties of such an agreement will apply. In the absence of such an agreement, royalties of intellectual property rights paid to the Franchisor are taxed in Greece with 20% on the gross amount, and that amount needs to be withheld by the Franchisee as a prerequisite for the royalty payment to be transferred by the bank. After the withholding of the above mentioned percentage, the Franchisor has no other tax obligation in Greece arising from the Franchise Agreement. Furthermore, all restrictions on the movement of capital between Greek residents and residents of EU member states and also of third countries for intellectual property rights that pertain to patents, designs, trade marks etc. have been abolished.

What are the methods for the Franchisor to franchise in Greece?

There are different approaches that are commonly in use for the Franchisor to franchise in Greece: These are:

1. Direct Franchising
   The Franchisor franchises individual franchise units directly from his country into Greece without the intervention of a third party, by concluding Franchise Agreements directly with individual Greek Franchisees.

2. A branch operation or a subsidiary company
   The Franchisor establishes a subsidiary company or a branch office in Greece, which act as the Franchisor for the purpose of granting franchises in Greece by concluding Franchise Agreements with individual Greek Franchisees.

3. Area Development Agreement
   The Franchisor concludes a Development Agreement directly with a Greek Area Developer, by which the Area Developer is entitled, but he is also obliged, to open and operate his own franchise outlets in Greece.
4. Master Franchise Agreement
The Franchisor concludes a Master Franchise Agreement with the Greek Master Franchisee, by which (agreement) the Master Franchisee is entitled, but he is also obliged, to grant sub-franchises to Greek Individual Franchisees by entering into Franchise Agreements with them, acting as Franchisor in the Greek Market. Furthermore, the Greek Master Franchisee is entitled to open and operate his own franchise outlets.

5. Joint Venture
The Franchisor enters into a Joint Venture Agreement with a Greek businessman to establish a joint venture entity, usually a company, in Greece. This company acts as the Franchisor in Greece, by concluding Franchise Agreements with individual Franchisees.
What is meant by “leasing”?

The simple term of “leasing” covers a multitude of different contract types. A common definition of leasing is nevertheless provided by the International Accounting Standards Committee under International Accounting Standard 17 (hereinafter IAS17). Such definition was furthermore adopted by the European Union under the EC Regulation 1725/2003. Thus, under IAS17 leasing is defined as an agreement whereby the lessor conveys to the lessee, in return of series of payments (Rentals), the right to use an asset for an agreed period of time. Title of ownership to the leased asset may or may not be transferred to the lessee at the end of the lease agreement. In financial leasing agreements title of ownership to the asset is agreed to be transferred to the lessee upon maturity of the lease. Leases are classified under IAS17 as either financial or operating leases. A financial leasing is a lease that transfers substantially to the lessee all the risks and incidental rewards to ownership of an asset as opposed to the financial risks assumed by the lessor. Operating leases on the other hand are the leases where the lessor assumes both financial and asset risks. Generally all non financial leases are considered as operating leases.

Is there a legal framework in Greece governing financial leasing agreements?

Law 1665/1986, as amended and in force, (hereinafter the Law) introduced for the first time in Greece the concept of financial leasing. The Law did not provide with specific definition for financial leasing agreements but merely referenced to certain characteristics that a financial leasing agreement should have in order to be considered as such. Thus, according to Article 1 of the Law, financial leasing is mainly defined as a contract between a leasing company or a bank (the lessor) and a company or a professional (the lessee) whereby the first grants to the latter, for a certain period of time, the use of assets upon rental, whilst giving to the lessee the right at the end of the lease term, to either buy the asset or to renew the lease agreement (the Option). The Law only regulated financial leasing transactions.

Why should I choose financial leasing rather than other financial instruments?

Financial leasing is a contemporary and advantageous financial tool for any business seeking financing in order to acquire and use capital assets, securities and/or other property, with the total funding of their value but without any need for direct disbursement of the necessary funds. Thus, in financial leasing transactions the lessee
shall not directly participate in the investment costs and will keep unaltered (even theoretically) its creditworthiness, as well as integer position or even its liquidity funds for making other investments. Generally, financial leasing presents for potential investors the following advantages:

- The ability to finance fixed, capital assets without providing further covenants to the lessee (since the lessor is the owner of the lease asset);
- The improvement of a company’s capital structure and its credit rating;
- The opportunity to reduce the overall tax expense (the rentals are tax deductible);
- The exploitation of financial resources deriving from privately-owned financial assets (sale and lease back of commercial buildings);

Is it possible for anyone to receive financing through a financial leasing transaction?

Financial Leasing is a financial tool used by companies and/or freelancers for obtaining and using capital assets for their productive and investing purposes. Pursuant to Article 1 of the Law, notwithstanding the lessee’s nationality and/or place of establishment, the asset leased by means of a financial leasing should solely be destined for the lessee’s professional use. Thus, any person (legal entity, natural person) may be eligible to contract a financial leasing agreement as long as such persons exercise any kind of profession or business activity and intends to use the leased asset for such purposes. On the contrary, employees, consumers, public servants and/or any other person not conducting a commercial business activity are not entitled, in principal, to financial leasing.

Which are the entities entitled to provide financial leasing?

Pursuant the provisions of Law, as currently in force, leasing contracts may only be concluded by the following entities as lessors:

- leasing sociétés anonymes established with the object of conducting the operations referred to in Article 1 of the Law;
- credit institutions, within the meaning of Article 1(a) of Law 3601/2007, lawfully established and operating in Greece;
- credit institutions, within the foregoing meaning, based in EEA Member States and established in Greece through branches or providing cross-border services in Greece, within the meaning of Articles 13 and 15 of Law 3601/2007;
- credit institutions, within the foregoing meaning, registered in third countries and established in Greece through branches;
- financial institutions, within the meaning of Article 2(11) of Law 3601/2007, based in EEA Member States and established in Greece through branches or providing cross-border services in Greece, under Article 18 of Law 3601/2007; and
- financial institutions registered abroad and established in Greece through branches.

The establishment of leasing companies in order to conduct leasing activities in Greece is subject to authorization by the Bank of Greece, which is responsible to supervise
and control such companies, define the conditions of authorization and set solvency, liquidity and risk concentration ratios.

**Shall I contact directly the leasing company?**
First of all, usually the lessee enters into negotiations with the supplier (i.e. seller of the asset to be leased), during which the lessee chooses the asset suitable for its activity and agrees with the supplier the purchase price of the asset. The lessee then refers to the leasing company in order to finance the purchase of the asset. The leasing company carefully examines the financial good standing of the lessee and his ability to pay the leasing rentals. If the leasing company agrees to finance the purchase, a financial leasing agreement is then executed between the lessor and the lessee. Subsequently, the leasing company (lessor) settles to the supplier the purchase price of the asset and mandates the latter to deliver the asset to the lessee.

**Can I lease any kind of asset for my business through financial leasing?**
Pursuant to the provisions of the Law, a Financial Leasing agreement may concern, subject to the exceptions herein below mentioned, any kind of movable and/or immovable asset the use of which may be granted to the lessee by the lessor. Such assets may be, including but not limited, as referred hereinunder:

- Movable assets: machinery, industrial equipment (for commercial, industrial or agricultural use), harvesters, tractors, earth movers, other “wheeled” assets that are not registered, computers and business machines, IT equipment and other business machines, road transport vehicles, motorcars etc;
- Airplanes, helicopters;
- Real estate’s (i.e. professional buildings, agricultural plots, apartments, offices etc.);

Services, boats and/or any kind of floating crafts cannot, pursuant to Article 1 par. 2 and 3 of the Law, constitute the object of a financial leasing agreement. Furthermore, professional buildings are also excluded for sale and lease back transactions [as opposed to direct leasing transactions] where the lessee is a freelancer [as opposed to a legal entity].

**Are there different kinds of financial leasing agreements?**
Although there are different kinds of financial leasing agreements (i.e. mixed leasing, leveraged leasing, construction leasing, lease down, vendor leasing etc.) in the majority of cases financial leasing is encountered, either as a:

(a) “Direct leasing” transaction: whereby the lessee enters into negotiations with the supplier of the asset and agrees with the latter all matters relating to the purchase of the asset (specifications, pricing, delivery dates etc.). The leasing company executes a financial leasing agreement with the lessee and settles the purchase price of the asset. The supplier then delivers the asset to the lessee. Usually the lessor, since it did not participate in the negotiations for the purchase of the asset, conveys to the lessee all rights a buyer usually has against the seller (supplier) of such asset under a contract of sale. The lessee undertakes to keep the asset appropriate for use, to enter into an
insurance agreement for such asset and in general to bear all the obligations deriving from it. The lessee bears in other words all the risks of the asset; or (b) as a “sale and lease back” transaction: whereby the potential lessee prior to the execution of the leasing agreement is the owner of the asset to be leased. Thus, the lessee sells the asset to the leasing company, receives the agreed purchase price for the transfer of property and subsequently executes the leasing agreement whereby the lessor leases back to the lessee the use of the asset. Such transaction offers to the lessee liquidity, as opposed to the use of a specific asset as under direct leasing transactions.

Can I “sell and lease back” any kind of asset?
Pursuant to the Law, as amended and currently in force, any asset could in fact become the object of a sale and lease back transaction. In practice however, sale and lease back transactions are mainly encountered in real estate (commercial buildings) transactions.

Is there a minimum term for a leasing transaction?
The Law provides minimum term requirements for leasing transactions depending on the asset leased. Thus the minimum lease term for equipment is three (3) years, for aircrafts five (5) and for real estate ten (10) years.

Can I repay the financial leasing and buy the asset before maturity of the leasing contract?
Yes. Usually repayment of the financial leasing and transfer of property of the leased asset to the lessee may happen before maturity of the lease agreement as long as the lessor agrees to such repayment. Before any such repayment the lessee should nevertheless examine all tax implications relating to it.

Am I allowed to sublease a leased asset?
Yes. The lessee may request from the lessor to grant him the right to sublease the asset. Sublease of the asset is more often encountered in real estate transactions (e.g. hotels and/or real estate companies leasing premises and then subleasing such premises to third parties) and in “passenger car” transactions (e.g. car rental companies). Usually the leasing company requires that the sublease rentals are assigned from the lessee to the lessor in order for such rentals to be directly collected from the leasing company. The Lessor thus adjusts the amount of the leasing rentals to the amounts collected from sublease rentals (back to back).

When is a financial leasing agreement dissolved?
A financial leasing agreement is usually dissolved upon:
- maturity of the lease term; The lessor transfers title of ownership of the asset to the lessee if all rentals are paid;
- purchase of the asset before maturity of the agreement;
- destruction of the asset;
- termination of the agreement; Usually the lessor terminates the leasing agreement if the lessee is in breach of the contract;
- bankruptcy of the lessee; The financial leasing agreement is automatically terminated (pursuant to Article 4 par. 3 of the Law).

**What happens with the leased asset if the leasing company is declared bankrupt?**
As opposed to the lessee's bankruptcy, the leasing agreement is not automatically terminated upon bankruptcy of the lessor. Claims that the lessor had against the lessee (in relation to the payment of the rentals etc.) are transferred to the bankruptcy property and the rentals should be paid to the trustee in bankruptcy. The trustee in bankruptcy, upon maturity of the lease agreement and settlement of the totality of the rentals is obliged to transfer title of ownership of the asset to the lessee.

**Are there any fiscal advantages in financing my business through financial leasing?**
As above mentioned the institution of financial leasing was inaugurated in order to assist local economy and to facilitate the accomplishment of investments. Thus, the Law provided leasing transactions with different tax exemptions. Pursuant to Article 6 of the Law a complete and objective exemption of tax, duties, contributions, rights due to the state and/or to state companies and in general due to any third party was established. Furthermore, as opposed to borrowers with loan agreements that are only allowed to deduct from their gross income the interest of installments paid to the bank, lessees with financial leasing agreements are entitled to deduct from their gross income the totality of the amount of the rentals paid to the lessor (interest and capital). The amount of the rentals is considered as an operating expense of the lessee. Furthermore, according to Article 6 par. 1 of the Law, notwithstanding VAT and/or income tax, the following are exempt of any other tax, duties, contributions, rights etc:
- The contracts by which the leasing company acquires any movable assets which will then be leased through a financial leasing agreement. (Transfer of property of a real estate is subject to property transfer tax except in cases of sale and lease back of commercial buildings and transfer of property from an offshore company);
- The financial leasing agreement itself;
- The assignment agreements or other agreements relating to or in connection with a financial leasing agreement;
- The Public notary's fees etc;
- The transfer of property of the asset to the lessee at maturity of the lease agreement (even if such asset is a real estate) are exempt from property transfer tax and from surplus value tax.

**Is there any special accounting treatment involved in a financial leasing transaction?**

(a) **Lessor's accounting.** Under IAS 17 finance leasing lessors shall record assets held under a finance lease in their balance sheets as receivables at an amount equal to the net investment in the lease. Income is recorded so as to give a constant periodic rate of return on the lessors net investment in the lease.
(b) Lessee’s accounting. The lease should be recorded in the balance sheet of the lessee as a fixed asset and as an obligation regarding the payment of future rentals. It should be capitalized at the lease commencement (i.e. the date from which the lessee is entitled to exercise its right to use the leased asset). Initially the value of the asset and liability should be calculated as the fair value of the asset or if lower, as the present value of the minimum lease payments. The value of the asset is then depreciated in the same way as for any other fixed asset over the shorter of (i) the term of the lease and/or (ii) the asset’s useful life.
I. INTRODUCTION

The increasing changes in trading conditions, as the result of modern transactional needs, has lead to the adoption of new methods that meet the new requirements. In this context, new forms of trading have been developed, in order to respond to these new circumstances. Due to the above, new conventional forms are taking shape worldwide. Two of the most significant are Factoring and Forfaiting, that have also recently been applied in Greece, according to the article 361 of the Greek Civil Code and, mainly, to the 1905/1990 Greek Law.

II. FACTORING

What is Factoring?

Factoring is a contract form that refers to three parts; the Factor, the Supplier and the Debtor. With the contract, the supplier assumes the claims against his client (debtor), with respect to sales or service on credit, to the Factor, who offers a package of services to the first one, such as prepayment, customers’ solvency monitoring, accounting, recovery and, on some occasions, adoption of credit default risk, depending on the format of Factoring chosen (see below), with remuneration.

What are the criteria that should be met by the Factor?

According to Greek Law, Factoring can only be exercised either by credit institutions (Banks), that are established and operating legally in Greece or a company in the form of a societe anonyme (S.A.) whose sole purpose is dealing with Factoring. For foreign companies that are installed and operating in Greece, it is not necessary to have the form of S.A. Furthermore, a special license from the Bank of Greece, the surveillance authority, has to be granted. This special licence has also to be granted to companies transformed into S.A.s with the sole purpose of dealing with Factoring and to foreign companies that are installed and operating in Greece with the same sole purpose as the above.

What are the conditions required by the Bank of Greece for granting the special licence?

The person(s) concerned with the establishment of such a company has to meet the minimum capital requirements as described below and maintain them at least at that level. Furthermore, an application must be submitted to the Bank of Greece, accompanied by notification of the identity of;

a. the person(s) owning more than 10% of the shares of the company or the rights to vote.

In case of legal persons, the Bank of Greece is entitled to request information about the persons controlling them.

Those persons have to fill out a special questionnaire accompanied by:

i) a declaration of its accuracy

ii) a copy of criminal records (type A)

iii) a certificate of non-bankruptcy and
iv) a declaration of origin of financial resources
b. the (at least two) persons responsible for determining the orientation of the company (that have to be members of the Governing Board), the other members of the Governing Board and the heads of the sections of the company.
Those persons also have to fill out a special questionnaire accompanied by:
   i) a declaration of its accuracy
   ii) a copy of criminal records (type A)
   iii) a certificate of non-bankruptcy
   iv) Full curriculum vitae and
   v) Two letters of recommendation for each person, given by persons not related to the company
The following must also be submitted;
   i) Draft statutes of the company under establishment with its full name
   ii) Feasibility study and action plan of the company with description of the origin of capitals, the system of internal controls and procedures, the organizational and administrative structure and the system for drawing information.
In case of a change in the above persons or the statutes, the Bank of Greece must be informed at least a month beforehand.

What are the capital requirements of a company dealing with Factoring?
According to paragraph 3 of article 4 of the Greek Law 1905/1990, as it was modified by article 10 of Greek Law 2232/1994, the Share Capital is required to be at least 4.500.000 euros, ie a quarter of the minimum share capital required for the establishment of a banking S.A, that is 18.000.000 euros, according to the 2471/2001 Governor’s of Bank of Greece Act. Alternatively, the Share Capital may be half of that, ie 2.250.000 € and the remaining half by contribution in kind, if it is to be used by the company to meet its needs.

What are the most common formats of Factoring?
According to the principle of the freedom of contracts, the parties are able to adjust the factoring contract to their occasional needs. The following forms of Factoring are considered the most usual;
   - True vs. Non-true Factoring;
   - “Apparent” vs. “Invisible” Factoring
   - Domestic vs. International Factoring

In True Factoring, the Supplier does not carry the risk of the debtor’s insolvency, which is brought by the Factor, within the limits he has set. Therefore, the Factor cannot claim on the Supplier, if he is not able to collect the debt from the debtor. In this case, the Factor pays the Supplier the amount of the debt, with the removal of his remuneration and the interest discount, or, in any case, the amount agreed.
In Non-True Factoring, if the Factor cannot collect the debt from the Debtor, he maintains the right of recourse against the supplier, who is obliged to pay for it.

The “invisible” form helps to avoid the possibility of the Supplier’s clients perceiving the Factoring as his economic weakness. However, apparent Factoring has nowadays become more prevalent. In any case, it depends on the parties and especially the Supplier, to decide whether they either choose the apparent or the Invisible form of Factoring.

With domestic Factoring, the Supplier is able to cover his import needs or his needs related to the Internal Market, while with International Factoring he is able to cover his needs related to exports or the International Market. In the latter form, the Factor collaborates
with a correspondent Factor based on the state of Import by sharing the duties and the remuneration between them. Alternatively, the Supplier can directly address a Factor based on the state of Import.

**How does Factoring technically work?**
An open (clearing) account is usually kept between the Factor and the Supplier that works as the accounting for reciprocal debts. It typically only contains invoices and refers to continuous and repeated collaboration, in terms of short-term funding (up to 4 months).

**What are the primary functions of Factoring?**

i) **Funding Function;** The Supplier conveys a claim to the Factor at a price agreed, that enforces the liquidity of the first one. The commission for the Factor’s services and the risk-taking is deducted from the price.

ii) **Insurance Function;** It refers to the risk of insolvency that is undertaken either by the Factor (“true” factoring) or by the Supplier (“non-true” factoring).

iii) **Management function;** It includes the accounting and legal monitoring of the process of collecting the debts by the Factor and the periodical informing of the Supplier.

**What are the benefits of Factoring for the Supplier?**

i) The Supplier can be committed to his aims, without the need of imposing this duty on his accountants, who are usually busy with other duties related to the Supplier’s objectives.

ii) Funding can be raised immediately, strengthening the liquidity of the Supplier’s company with the prepayment of the larger part of the claims assigned (usually about 80%) by the Factor. The liquidity would otherwise be based on bank lending with high interest rates and would be recorded as liability on the Balance Sheet of the Supplier.

iii) Collateral security is not necessary, as it would be in terms of bank lending. Funding is based on the solvency of the Supplier’s clients, as estimated by the Factor.

iv) The risk of the insolvency of his clients, especially in “true” Factoring, does not burden the Supplier, but the Factor, which is responsible for assessing it in advance.

v) The cost of the Factor’s services is agreed in advance as a rate of the debt (usually about 1-3% of the claims assigned), so the supplier knows how much he will need to pay.

vi) The Factor also provides consulting services that have been proved to be highly helpful for the Supplier’s planning.

vii) The Factor’s services are also agreed in advance and the Factor is responsible for informing the Supplier periodically about the status of the debts and the amount accrued.

viii) The advance payment of the debts by the Factor is recorded on the Balance Sheet of the Supplier as an asset, improving its figure considerably.

ix) The Supplier is released from the duty of asking his clients, and especially the captious ones, to pay their debts and good cooperation and relations between them are maintained.

**What is the cost of Factoring?**
It depends on the agreement and the format of Factoring chosen. Usually, the commission varies between 0.50%-2.50% plus the interest discount.

**What kind of companies should think about Factoring?**
Companies with developing and profitable domestic or international activity with notable turnover, that issue invoices of considerable value with short-term credit and a constant range of customers would obtain plenty of benefits by using the flexible institution of Factoring.
III. FORFAITING (FORFEITING)

What is forfaiting?
Forfaiting is a rapidly spreading modern method of funding export transactional activity, with wider application to postponed payments of debts. Forfaiting is connected to medium- and long-term international commerce (6 months to 10 years) and literally means that the seller (exporter) loses his right for future payments from the buyer (importer), because the forfafter pays at the current time, on a base of 100% of the commercial price (deducting the commission agreed and the discount interest), without the right of recourse, because of the total risk-taking by the forfafter.

How does forfaiting technically work?
The function of Forfaiting refers to the purchase of securities, such as bills of exchange or treasury bills from the forfafter. The securities are guaranteed by a bank and include debts on international transactions of capital goods or supply of services. The Forfafter (purchaser) cannot claim on the seller of them (Exporter), if the Principal Debtor does not pay. The Forfafter undertakes the whole risk.

What kinds of risks are undertaken by the forfafter?
In typical Forfaiting contracts, all risks such us credit risk, political risk, currency (exchange) risk, legal risk and interest rate risk are undertaken by the Forfafter.

What is the liability of the exporter?
The exporter is only responsible for the legitimacy of the claim, the authenticity of the documents used and the completion of the commercial contract. Additionally, before the conclusion of the contract, the exporter must get the Forfafter’s approval.

How can a forfafter be secured?
Normally, the debts the Forfafter assumes (purchases) should be accompanied by a bank guarantee from a credit institution in the country of the importer. The guarantee has to be irrevocable, fully transferable, with specific reference to every individual payment and expiring date and independent of the execution of the commercial operation.

What kind of bank guarantees are the most common?
It varies, but it can be said that the Letter of Guarantee or an annotation on the body of the security (“per aval”) are mostly used.

Who can be a forfafter?
Forfaiting services are usually offered either by a factoring company (see the requirements above and procedure of establishment) or a bank.

What are the benefits of forfaiting?

i) For the Exporter
   a. Indirect funding immediately, without the need for bank loans
   b. The risks are transferred to the Forfafter
   c. Quick and simple documentation
   d. Ability of calculating the financial costs in advance
   e. Foreign capitals can be collected without spending time and money

ii) For the Importer
   a. The excessively binding contracts can be avoided
b. Legal and administrative costs are eliminated
c. Rapid processing of trade is achieved
d. There is no publicity

iii) For the Forfaire

The significant commission overshadows all the reservations about the risks undertaken and, especially with the bank guarantee, Forfaiting becomes a profitable business activity.

iv) For the Economy

By enforcing the liquidity of the companies, it contributes to the whole commercial and, ultimately, financial circuit, offering a lot to economic development and market growth.

What is the cost of forfaiting?

It depends on the agreement. Usually, it is rather higher than the cost of Factoring because of the more extensive risks undertaken, despite the fact that no other services are usually provided.

What kind of companies should use Forfaiting Services?

Companies with a significant turnover in export activity that need indirect funding immediately with low cost and without the risk of clients’ insolvency or any other risk represent the typical target group of Forfaiting.

IV. COMPARATIVE ASSESSMENT

How to choose between Factoring and Forfaiting?

It depends on the following criteria;

i. International or Domestic Commerce

Factoring can be applied to both, whereas Forfaiting mainly applies to international commerce.

ii. Ability of Recourse against the Supplier/Exporter

Factoring (the “non-true” one) gives this ability, whereas true Factoring and Forfaiting do not.

iii. Provision of Services

Whereas factoring offers a huge range of services, forfaiting mainly offers funding.

iv. Due Date

Factoring is connected to short-term debts (up to 4 months), while Forfaiting is appropriate for medium- and long-term ones (6 months to a decade).

v. Kind of cooperation

Factoring creates constant cooperation, but Forfaiting refers to a specific assignment.

vi. Risks undertaken

Whereas the greatest risk undertaken by the factor is basically the insolvency of the debtor, the Forfaire undertakes all the range of risks.

vii. Assurance

For the Factor to be ensured, a further contract with an insurer is required, whereas the Forfaire is from the outset ensured because of the bank guarantee.

viii. Type of merchandise

Factoring is also appropriate for consumer goods. On the other hand, Forfaiting only involves capital goods.

ix. Compatibility

While factoring is more flexible, Forfaiting uses mostly certain currencies, such as €, CHF, $ and JPY.

It is obvious that Forfaiting is not an alternative to Factoring, but the one is applicable where the other one is not.
V. BUSINESS BENEFIT AND TAXATION
It is a fact that the cost of both Factoring and Forfaiting is well worth it. The use of these services minimizes other costs, such as intercompany human resources and infrastructure cost that would be much larger than the one demanded for the services of a Factor or Forfaiteur for the same purposes. The taxation for the supplier/exporter consists of the VAT on services, i.e., 23% of the price. Despite that, Factoring and Forfaiting remain worthwhile. Furthermore, the taxation for the Factoring or Forfaiting Company depends on the individual existing income tax law.

VI. THE GREEK MARKET
In Greece, the relevant market opened up in 1991, after the publication of the 1905/1990 Greek law. Since then, it has rapidly expanded. Nowadays in Greece, such services are mainly offered by Subsidiary Companies of Banks or by Banks themselves. There are also a few branches of foreign companies with sole purpose or branches of foreign (especially European) credit institutions (Banks).

VII. CONCLUSION
The modernization of transactional forms leads to the adoption of new methods as part of the segmentation of duties and the acceleration of trade. Factoring and Forfaiting contribute to the development of modern domestic and international commerce and are very promising.
FINANCIAL TOOLS
What are the most widely known negotiable instruments, mostly used in transactions?

- bills of exchange
- cheques
- shares
- bonds
- insurance policies
- bills of lading
- repositories
- commercial payment orders
- commercial debentures
- warrants
- airway bills

What are the necessary elements a bill of exchange must bear to ensure it has been legally issued?

There are nine (9) standard elements a bill of exchange must necessarily include, as follows: a) The title “Bill of exchange”, b) A clear and simple payment order for a fixed amount, c) The name of the drawee, d) The expiry date of the bill of exchange, e) The place of payment of the bill of exchange, f) The name of the acceptor, g) the date of issue, h) the place of issue, i) the drawer’s signature.

What is the financial importance of a bill of exchange?

Today, the main function of the bill of exchange is for credit, which means that it is used as a means of providing credit, as it does not need to be paid upon presentation, but within a certain period after its issue.

How does the bill of exchange circulate and how does it work?

The bill of exchange is issued according to a certain formula, whereby a person, the “drawer”, instructs another person, the “drawee”, who, if placing his signature is called the “acceptor”, to pay a third bearer “acceptor” or the drawer (in order of myself), a certain amount at a certain time and place. The payment of the bill of exchange can be underwritten by a third party subscribing it in favour of any debtor, i.e. in favour of the drawer, the acceptor or the endorser. Further, the acceptor may transfer the bill of exchange to another person, the “bearer”, by endorsing this, i.e. by placing his or her
signature on the back of the bill exchange, giving it to a debtor who has a debt towards him, who shall have the right to its payment.

**How are bills of exchange paid?**

Upon the presentation of the bill of exchange by its bearer, the drawee, who, if he has signed it is called the acceptor, must immediately pay the amount stated thereon. Upon paying the entire amount, the drawee is entitled to request the bearer to deliver the bill of exchange paid. If the drawee (or acceptor) fails to pay the bill of exchange upon its presentation for payment by its bearer, the latter may request that it be paid by either the drawer or the previous endorsers. This right of the bearer is called right of recourse, for which a deed of protest is written, unless the bill of exchange has a free return clause.

**What other clauses are listed on the bill of exchange and what is their significance?**

The most common clauses on bills of exchange, provided expressly by the Law, are as follows:

a) “no liability to accept,” which means that the drawer is exempt from liability for accepting the bill of exchange.

b) “not to order”, which expresses the will of the drawer to prohibit the transfer of the bill of exchange by endorsing it.

c) “no deed of protest or free return,” which exempts the bearer of the bill of exchange from the obligation to draw up a deed of protest in the event of its non-acceptance or non-payment.

d) “non acceptable”, meaning that he/she prohibits its presentation for acceptance.

e) “at third part domicile”, stating that the bill of exchange should not be paid at the domicile of the drawee, but at the domicile of a third party.

**What is the collection procedure in case of non-payment?**

When a bill of exchange is not paid, the holder of the claim may seek satisfaction by either applying for an order of payment or bringing an unjust enrichment action.

**What is the limitation of claims from bills of exchange?**

Claims against the acceptor of the bill of exchange through the issue of orders of payment are limited three years from the maturity date of the bill of exchange. Claims of the bearer against the drawer or the other endorsers of the bill of exchange are limited one year from the date of the deed of protest, provided this was drawn up in time.

Claims by endorsers who paid the bill of exchange, the drawer and their underwriters are limited six months from the day on which the endorser voluntarily paid the bill of exchange.

Claims by the legitimate bearer of the bill of exchange through an action for unjust enrichment are limited five years from the maturity date of the bill of exchange.

**What is the financial significance of cheques?**

Cheques have evolved as the most useful bank securities in trade. Although cheques are considered a payment method and not a credit method like bills of exchange, their credit function in transactions has increased, since many of them are post-dated, thus
prolonging, usually for a considerable period, the 8-day deadline within which the law requires that a cheque be presented to the back for payment. Thus, the issue and circulation of post-dated cheques has essentially substituted the issue and circulation of bills of exchange.

What are the conditions for issuing and circulating a cheque?
Cheques are securities issued in accordance with a statutory formula by which a person, the “drawer,” instructs a Bank, the “drawee,” to pay, upon presentation of the security, a certain amount of money, usually from their account, to the person indicated on the bill (cheque contract). Furthermore, this “payee” may transfer the cheque to another “bearer” by endorsing it, i.e. putting his signature on the back of the cheque, giving it to a lender who has a debt towards him, who will have the right of its deposit to the paying bank. The bearers and holders of the cheque are legal bearers only when they support their right to an uninterrupted series of endorsements, meaning that there must be a regularity in the signatures on the cheque before them.

What is the standard information a cheque must bear to be valid?
The standard information a cheque should include are: a) The title “Cheque”, b) A simple and clear order for the payment of a fixed amount, c) The name of the drawee, i.e. the name of the Bank, d) The payment place of the cheque, e) The date of issue, f) The place of issue, g) The signature of the drawer of the cheque.

What types of cheque exist?
Depending on their circulation method, cheques are divided as follows:
a) “not to order” cheques are cheques stating the name of the payee. However, as cheques are securities issued to order according to the law, in order to be valid, these must explicitly state the clause “not to order”.
b) cheques “to order” are cheques stating the name of the payee, regardless of whether the clause “to order” is included or not.
c) “to bearer” cheques are cheques issued explicitly to the bearer or holder. Moreover, cheques that do not state the name of the payee (bearer) are considered “to bearer”. Finally, cheques stating the name of the payee (bearer), but including the clause “to bearer” are also considered “to bearer”.
Depending on their issue method, cheques are divided as follows:
a) Domestic cheques, drawn and payable in Greece.
b) International cheques, drawn in Greece and payable in another country or vice versa. Depending to the person entitled to collect the funds, cheques are divided as follows:
a) crossed cheques are those that, by special indication of the drawer, may be paid by the paying bank only to a bank or customer of the paying bank.
b) cheques payable in account are those stating “payable in account” in their front part, referring to the payment method. This indicated that they should be paid via an accounting transaction and not in cash.
How are cheques paid?
According to law, cheques are payable upon presentation, even on their drawing day. The presentation deadline is eight (8) days from the day following their drawing, and they must be paid to the lawful bearer and at the place of issue. In practice, it is usual to draw post-dated cheques, which essentially extend the deadline for their presentation and furthermore postpone the start of the limitation. The paying bank is not obliged towards the lawful bearer to pay the cheque. It is obliged only against the drawer under the cheque contract. When a cheque presented in time for payment to the Bank is not paid, because the drawer does not have available funds, it is referred to as dishonoured.

What is the cashing procedure of cheques in case of non-payment?
When the rightful holder of the cheque presents it to the paying bank and it is dishonoured, the paying bank confirms the non-payment by “sealing” the cheque, which is done so that the bearers can exercise their rights against the drawer and any other endorsers of the cheque. In this case, the rightful bearer of the check may proceed to three actions:
- a) Submission of a complaint for a dishonoured check, which constitutes a criminal offence.
- b) Application for an order for payment against the drawer and the endorsers.
- c) Action to condemn the drawer to reimburse, under the provisions of tort.
- d) Action against the drawer and the other endorsers of the cheque under the provisions of unjust enrichment, only when the bearer has lost his right to recourse, either because he did not present the cheque in time, or because he did not confirm the denial of payment correctly or because his right is barred.

What is the limitation of claims for dishonoured cheques?
- a) The complaint is submitted within three (3) months from the end of the 8-day period after the presentation of the cheque.
- b) The application for an order for payment against the drawer and the other endorsers of the cheque may be issued within six (6) months from the expiry of the deadline for the presentation of the cheque.
- c) The action for the condemnation of the drawer to reimbursement under the provisions of tort against the drawer and the other endorsers of the cheque is barred five years after the date of sealing of the cheque and
- d) The action against the drawer and the other endorsers of the cheque under the provisions of unjust enrichment is barred five (5) years after the issue date of the cheque.

Which are the competent courts for exercising remedies for the recovery of debts from bills of exchange and cheques?
The courts with geographic jurisdiction for applications for payment orders are those of the domicile of the defendant or the issuing place of the cheque or bill of exchange, while the local courts hold material jurisdiction, if the value of the securities is up to 20,000 Euro and the First Instance Courts if their value is 20,001 Euro or more.
What is a share?
A share is one of equal parts in which the share capital of a limited liability company is divided. The acquisition of the share's ownership proves the status of the bearer as a shareholder. Shares are primarily divided into:
a) bearer shares, which do not mention the name of the beneficiary
b) nominal shares on which the name of the holder is stated, and
c) intangible shares, issued in intangible form and listed on a regulated stock market.

How are rights on shares exercised?
Rights on shares are proportional to the number of shares held by the shareholder. Indicative rights are a percentage equal to the number of shares held by the shareholder in the total shares of the company, the dividend from the retained earnings of the company, the relevant number of votes at the General Meeting of shareholders as well as corresponding percentage of the company's property, if the company dissolves.

What is the financial function of bonds?
Bonds are securities that are issued by a limited liability company that is to conclude a loan bond. The General Assembly of the company decides on the issue of the loan. After the maturity of the bond loan, bondholders exercise their rights individually, unless otherwise provided by the terms of the loan. Each bond includes a separate autonomous and independent right of lender, who can exercise the rights deriving from the bond solely and independently of the rest.

What is a trade payment order?
These are orders according to which the drawer-merchant instructs the payer-merchant to pay a certain amount of money to a named person (acceptor).

What are commercial debentures?
These are securities drawn only by merchants, which include a promise to the acceptor to provide money or other replacements. The validation data of commercial debentures are as follows:
a) to order clause
b) promise to pay a certain amount of money, and
c) drawer's signature

What are repositories and warrants and what is the difference between them?
These securities are issued by the General Stores that have been specifically authorized in Article 2 of L.D 3077/1954 “On General Stores” and they are trading companies that possess storage facilities. For each batch of goods, these must issue a repository and a warrant. The parties in this contract are the contractor of the general stores and the depositor of the goods. The repository verifies the receipt of the goods described therein and promises to deliver them to their legal holder, while the warrant embodies a request for payment, ensured by a pledge on the goods that are stored in the General Store.
**What is the function of the bill of lading?**

The bill of lading is a private document issued by the insurer and embodies an insurance claim under a corresponding contract. There are two types: sea and overland bills of lading. Sea bills of lading are securities with a certain content, issued by the charterer or captain or maritime agent that act as representatives of the charterer, and embody a request for the delivery of certain goods loaded for sea transport. Overland bills of lading are issued by carriers and embody their promise to transport goods to their destination and deliver them to their legitimate holder.

**What is an Insurance policy?**

An insurance policy is a private document proving the existence of an insurance contract. It is issued by the insurer and is deemed a security only when it contains a clause indicating that the insurance claim is incorporated in the insurance policy.

**What are airway bills?**

These function like bills of lading. They are issued by the air carrier and prove the existence of a contract for the transport of goods.
Which is the applicable legal framework of covered bonds (the “Covered Bonds”) in Greece?

In Greece, the primary legal basis for Covered Bond issuance is article 91 of Law 3601/2007 “On the Undertaking and Exercise of Activities by Credit Institutions, Sufficiency of Own Funds of Credit Institutions and Investment Services Undertakings and Other Provisions” (the “Primary Legislation”). The Primary Legislation supersedes general provisions of law contained in the Civil Code, the Code of Civil Procedure and the Bankruptcy Code. By way of implementation of the Primary Legislation and pursuant to an authorization provided by the latter, the Governor of the Bank of Greece has issued Act nr.2620/28.8.2009 (the “Secondary Legislation”). Finally the legislative framework in Greece is supplemented by Law 3156/2003 “On Bond Loans, Securitization of Claims and of Claims from Real Estate” (the “Securitization Law”), to the extent that the Primary Legislation cross-refers to it.

Which are the Covered Bonds issuance’s structures under Greek law?

The Greek legislative framework permits the issuance of Covered Bonds in two ways, either directly by a credit institution, or indirectly by a subsidiary of a credit institution (the “Issuer”).

Under direct issuance structure the Covered Bonds are issued:

- either by a credit institution and the segregation of the cover pool is achieved through a statutory pledge over the cover pool asset; or
- by a credit institution and are being guaranteed by a special purpose entity (the “SPE”), which acquires the cover pool.

Under the indirect issuance structure the Covered Bonds are issued by a SPE, being a subsidiary of a credit institution, which purchases the cover assets from the credit institution by virtue of the provisions of the Securitization Law, and the Covered Bonds are guaranteed by the credit institution.

What are the prerequisites for the issuance of Covered Bonds?

According to the Primary Legislation, Covered Bonds may be issued by credit institutions having Greece as their home member state. However, in case of issuance of Covered Bonds by a credit institution having as home state another member state of the European Economic Area (EEA) and provided that they are characterized as covered bonds in accordance with the law of such member state, the provisions of the Primary Legislation on the creation of a statutory pledge will apply in relation to claims governed by Greek law, as well as the tax exemptions which apply to Greek bonds. Therefore,
foreign banks established within the EEA and having a significant loan portfolio in Greece may use the loans of such portfolio as part of the cover pool. The Secondary Legislation sets additional prerequisites for the issuance of Covered Bonds. Specifically the credit institutions issuing Covered Bonds:

- must have certain minimum risk management and internal control requirements including suitable policies and procedures for the issuance of Covered Bonds, organizational requirements, IT infrastructure and a policy for the reduction and management of risks deriving from the issuance of Covered Bonds, such as interest rate risk, counterparty risk, operational risk, FX risk and liquidity risk; and
- must have aggregate regulatory capital of at least 500 million Euros and a capital adequacy ratio of at least 9%.

**What kind of assets can qualify as cover assets under Greek law?**

As cover assets qualify primarily:

- residential mortgage loans and loans secured by a mortgage on commercial properties. The property subject to the mortgage should be situated in Greece and hence be governed by Greek law. The loans may be secured by mortgage prenotations instead of full mortgages (as is the practice for cost reasons in Greece), provided the credit institution has adequate internal procedures to ensure the timely conversion of mortgage prenotations into mortgages;
- loans secured by a mortgage on ships;
- loans to or guaranteed by state entities; and
- openings to credit institutions and investment services undertakings (up to an aggregate limit of 15% of the nominal value of the outstanding covered bonds); and
- derivatives (to the extent that they are used exclusively for the purpose of hedging the interest rate, FX or liquidity risk).

The cover assets may be substituted by certain tradable assets but only up to the amount by which the aggregate nominal value of the cover assets, including accrued interest exceeds the nominal value of the outstanding covered bonds including accrued interest.

**Should the cover asset comply with any loan to value (LTV) criteria to be eligible?**

Loans secured by residential mortgages are required to have an LTV ratio of 80%, whereas loans secured by mortgages over commercial properties and ships are required to have an LTV ratio of 60%. Loans with a higher LTV ratio may be included in the cover pool, but they are taken into account for the calculation of the statutory tests described below only up to the amount indicated by the LTV ratio. The valuation of properties must be performed by an independent valuer at or below the market value and must be repeated every year in relation to commercial properties and every three years in relation to residential properties.
Is the Covered Bond Issuer under any statutory obligations?

The Secondary Legislation provides that the Issuer during the life of the bond issuance has to perform the following statutory tests in relation to the cover pool:

- **Nominal Value Test:** The nominal value of the Covered Bonds including accrued interest may not exceed at any point in time 95% of the nominal value of the cover assets including accrued interest.

- **Net Present Value Test:** The net present value of obligations to the Covered Bondholders and other creditors secured by the cover pool may not exceed the net present value of the cover assets including the derivatives used for hedging. This test must be met even under the hypothesis of a parallel movement of the yield curves by 200 basis points.

- **Interest Cover Test:** The amount of interest payable to Covered Bondholders for the next 12 months must not exceed the amount of interest expected to be received from the cover assets over the same period. For the assessment of the fulfilment of this test derivatives entered into for hedging purposes are taken into account.

Tests (b) and (c) are performed on a quarterly basis. In case any of the tests is not met, the credit institution is obliged to immediately take the necessary measures to remedy the situation.

The results of the tests (a) to (c) above and the procedures used to monitor the compliance with such tests are audited on a yearly basis by an auditor independent of the statutory auditors of the credit institution.

Are Covered Bonds subject to any specific disclosure requirements to the public and/or supervisory authorities?

The credit institutions that issue (directly or indirectly) covered bonds must provide in their financial statement and on their website information on the Covered Bonds, including the nominal value and net present value of the bonds and the cover pool and the net present value of the derivatives used for hedging.

Pursuant to the Secondary legislation there are the following disclosure requirements to the Bank of Greece which must be satisfied until end of March annually and must refer to data as of end of December of the preceding year:

(a) The audited results of the statutory tests mentioned under question 6 above; along with the necessary report including the data, methods and parameters that have been used;

(b) Detailed data of the cover pool assets which shall confirm the restrictions set by the Secondary Legislation along with the information related to the real estate revaluation of the real estate properties which are provided as security to the cover pool loans;

(c) The following additional data and information:

- Weighted average interest rate per category of assets and weighted average interest rate of all cover pool assets;
- The real estate values of the mortgages and of the other loans;
- Validation of the selected policy of risk hedging with detailed analysis of its effectiveness;
- Table of non corresponding maturities of the covered bonds and the covered assets and derivatives.

The credit institutions have to communicate to the Bank of Greece, within thirty (30) days from each quarter end, the statutory tests results as of end of 1st, 2nd and 3rd quarter respectively.

In case of disposal of Covered Bonds via a public offer, Greek law 3401/2005 (which transported into Greek law the Prospectus Directive 2003/71/EC) and the Commission Regulation 809/2004 are applicable.

**Are Covered Bonds immune to Issuer’s bankruptcy? Are cover assets segregated from the Issuer’s estate?**

In case of a direct issuance the cover assets are segregated from the remaining estate of the credit institution through a pledge constituted by operation of law (statutory pledge). In case of assets governed by a foreign law (which will typically include inter alia claims from derivative contracts), a security interest must be created in accordance with such foreign law. The statutory pledge and the foreign law security interest secure claims of the Covered Bondholders and may also secure (in accordance with the terms of the Covered Bonds) other claims connected with the issuance of the Covered Bonds, such as derivative contracts used for hedging purposes. The statutory pledge and any foreign law security interests are held by a trustee for the account of the secured parties (the "Trustee").

The claims constituting cover assets are identified by being listed in a document signed by the Issuer and the Trustee. A summary of such document is registered in the land registry of the seat of the issuer. Claims may be substituted and additional ones may be added to the cover pool through the same procedure. The cost for such registration amounts approximately 100€ per registration.

The Primary Legislation creates an absolute priority of holders of Covered Bonds (the "Covered Bondholders") and other secured parties over the cover pool. The statutory pledge supersedes the general privileges in favor of certain preferred claims (such as claims of employees, the Greek state and social security organization) provided for by the Code of Civil Procedure. Furthermore upon registration of the summary of the document listing the claims included in the cover pool, the issuance of the Covered Bonds, the establishment of the statutory pledge and the foreign law security interest and the entering into of all contracts connected with the issuance of the Covered Bonds are not affected by the commencement of any insolvency proceedings against the Issuer.

In case of an indirect issuance or a direct issuance guaranteed by an SPE the cover pool assets are segregated from the estate of the credit institution by virtue of their sale to the special purpose entity. For such a transfer the provisions of the Securitization Law apply, which provide equivalent protection from third party creditors and insolvency to the one the Primary Legislation provides in case of direct issuance. No specific provisions exist in relation to voluntary overcollateralisation. As a result the segregation applies to
all assets of the cover pool, even if their value exceeds the minimum required by law. The remaining creditors of the credit institution will only have access to any remaining assets of the cover pool after the Covered Bondholders and other creditors secured by the cover pool have been satisfied in full. According to the Primary Legislation both in case of direct and of indirect issuance the cover assets may not be attached.

**Which are the recourse rights of the Covered Bondholders?**

The Covered Bondholders have dual recourse both to the cover pool as secured creditors and to the remaining assets of the credit institution ranking as unsecured and unsubordinated creditors. To the extent that Covered Bondholders and other secured parties are not fully satisfied from the cover pool, they rank for their remaining claims as unsecured creditors of the Issuer.

**Which is the impact of insolvency proceedings on Covered Bonds?**

The Covered Bonds do not automatically accelerate upon insolvency of the credit institution having issued (in a direct issuance structure) or guaranteed (in an indirect one) the Covered Bonds. The Covered Bonds Loan Programme may provide that either from the outset or following the occurrence of certain events, as, indicatively, initiation of insolvency proceedings against the Issuer, the Trustee will be entitled to assign or undertake the collection and management, in general, of the cover assets by application mutatis mutandis of the Securitization Law.

Additionally the Primary Legislation provides that in case of insolvency of the Issuer, the Bank of Greece may appoint a special administrator, regardless of the powers they may assign to a commissioner or liquidator pursuant to general banking legislation, if the Trustee does not do so. The proceeds coming both from the collections of the claims that are included in the legal pledge and from the realization of the rest of the assets which are subject to the legal pledge are applied towards the repayment/redemption of the bonds and of the other claims, which are secured by the legal pledge, pursuant to the terms of the bond loan. The provisions of the Securitization Law are respectively applied in the sale, transfer, collection and administration of the cover assets.

**Upon insolvency events, could the cover assets be liquidated?**

The Primary legislation provides that upon certain events (like insolvency) the Trustee can be entitled, pursuant to the terms of the programme and the legal relationship connecting the Trustee with the Covered Bondholders, to sell and transfer the cover assets, and to use the net proceeds of such sale in order to redeem the Covered Bonds which are secured by the legal pledge, by way of derogation from articles 1239 and 1254 of the Civil Code. Such sale may occur by virtue of the Securitization Law or the application of the general applicable provisions.

**Do the Covered Bonds fulfil the criteria of art. 22 par. 4 of the UCITS Directive (the “UCITS 22(4)”)?**

The risk weighting of Covered Bonds (both Greek and foreign) is regulated by Part B par. 8 of the Act of Governor of the Bank of Greece No. 2588/20.8.2007, transposing part of...
the Capital Requirements Directive into Greek law. According to this, bonds falling within the provisions of UCITS 22(4) are considered to constitute Covered Bonds, provided that the cover pool consists of the assets enumerated in the Capital Requirements Directive. Covered Bonds have a risk weighting of 10%, if openings to the issuing credit institution have a risk weighting of 20%, and a risk weighting of 20%, if openings to the issuing credit institution have a risk weighting of 50%.

The directly issued Covered Bonds comply with both the UCITS Directive and the Capital Requirements Directive and therefore have the reduced risk weighting mentioned above in Greece and should also have it in other EU member states. The indirectly issued Covered Bonds do not fall within the letter of UCITS 22(4), because they are not issued by a credit institution.
COMPETITION
Which are the basic prohibitions under Greek competition law?
The general applicable provisions prohibiting anti-competitive behaviors and abuse of dominance are, accordingly, articles 1 and 2 of Law 3959/2011 (which recently replaced previous L. 703/1977).
Their wording actually constituting a literal translation of the equivalent articles 101, 102 TFEU, were initially introduced before Greece joined the EC and have remained unaffected until today. Both articles provide for an indicative list of typical (per se) violations (see below).

What is the objective of the above provisions?
Greek competition law aims to ensure the proper functioning of the market and, in effect, lead to consumer welfare. The well-established criteria for exemption of anti-competitive agreements, as set out in article 1 par. 3 of L. 3959/11 (equivalent to article 101 par. 3 TFEU) confirm the above.

Which undertakings are caught by Greek competition law?
The above provisions apply to all undertakings, i.e. both to private and public entities, as long as there is a business activity (functional criterion). It must also be noted that, in HCC practice, there have been several cases in the past that have involved liberal professions (dentists, lawyers, engineers).
In a recent case (Decision 501/V/2010), HCC examined an alleged abusive practice on behalf of Municipality of Athens regarding the terms of concession of use of pavement to cafes, restaurants etc. It was held that this is not an economic activity and therefore the Municipality of Athens was not considered to be an undertaking in this respect.

What is the relevant market?
In accordance with the EU approach, the first step is to define the relevant product and geographical market and next to estimate the market power of the interested parties therein. A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products’ characteristics, their prices and their intended use; A relevant geographic market comprises the area in which the firms concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous. In most cases brought before HCC, the relevant geographic market normally involves the whole Greek territory and this, usually being considered as “normally capable of affecting trade between Member States”, also entails application of article 101/102 TFEU.

How are anti-competitive agreements defined?
According to article 1 of L. 3959/2011, all agreements between undertakings, all decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in the Greek territory are prohibited and, in particular, those which:
(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby
impeding competition, in particular by refusing without valid justification, to sell, purchase
or conclude any other transaction; or
(e) make the conclusion of contracts subject to acceptance by other parties of additional
obligations which, by their nature or according to commercial usage, have no connection
with the object of such contracts.
The prohibition captures both horizontal and vertical behaviors, the difference being that
the first ones (“cartels”) are considered to constitute the most serious type of violation
and entail more heavy sanctions. As to the vertical agreements, the EU Block Exemption
Regulations (see also below) apply also in Greece, the resale price maintenance and the
restriction of passive sales constituting the highlight points of concern.

Exemption
Under article 1 par. 3 of L. 3959/2011, the provisions of paragraph 1 may, however, be
declared inapplicable in the case of any agreement between undertakings, any decision by
associations of undertakings, any concerted practice, which contributes to improving the
production or distribution of goods or to promoting technical or economic progress, while
allowing consumers a fair share of the resulting benefit, and which does not:
(a) impose on the undertakings concerned restrictions which are not indispensable to the
attainment of these objectives;
(b) afford such undertakings the possibility of eliminating competition in respect of a
substantial part of the products in question.
The above exemption criteria are cumulative, as per the EU model. Up until the enforcement
of the new competition law (L. 3959/2011), the system of self-assessment, as introduced by
EU Regulation 1/2003, was only partially adopted in Greece, given that a notification system
was still remaining mandatory (as per article 21 of L. 703/77). Now this formality has been
abolished and exemption applies automatically, once the above criteria are cumulatively
fulfilled. The burden of assessment lies with the undertakings involved.
The new law (article 1 par. 4 of L. 3959/2011) has also clarified that the EU Block Exemption
Regulations apply also for the purposes of exempting similar behaviors that are conducted
in Greece without affecting trade between member-states in the sense of 101 par. 1 TFEU.

Which are the criteria for establishing dominance?
Greek law does not contain a definition of dominance. Its elements have been formulated
in European case-law, which is also followed by the HCC. In this respect, the criteria of
market share (possibly >40-50%, depending on the allocation of the market power of the
rest players) and the ability of a firm to act independently of competitors and customers.
Of course, the overall market structure is always of interest (rest competitors, legal or actual
barriers to entry etc), so that even undertakings with less market share (even around 30%)
could be held dominant, if the degree of market share dispersion is high.
As for collective dominance, this is a concept stemming from EU approach and case-law. It is
generally accepted that it presupposes two conditions:

- that there is no substantial competition between the oligopolistic undertakings involved,
- that there are no significant competitive constraints exercised towards this “single
  entity” by other competitors in this market.
How is abuse of dominance defined?

Article 2 prohibits any abuse by one or more undertakings of a dominant position, within the national market or in a part of it, is prohibited. Such abuse may, in particular, consist in:
(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”

From the above indicative examples, it is confirmed that the provision does not distinguish between horizontal (exclusionary) and vertical (exploitative) practices, therefore both aspects of possible abusive practices are covered. The exact form of abuse of dominance may vary, therefore we would only highlight in short two points that are of particular interest for dominant undertakings: rebates and predatory pricing.

It is true that, with all the evolution of EU case-law, it is a rather hard task for a dominant firm to implement in practice a feasible discount policy, which could stand effectively in the market reality and, at the same time, be in full compliance with competition rules. It is generally accepted that rebates connected with target sales etc are only exceptionally admissible, once they are cost-related and justified. The rationale is common as per the EU approach, i.e. to prevent dominant firms from any practices that end out to bind the customers and exclude them from potential competitors.

As for predation, proper assessment of such a conduct presupposes a careful cost analysis. As a general rule, the critical threshold is average variable cost, since sales below such cost are deemed to be abusive. Other than that, each case needs to be examined on an ad hoc basis, in the framework of the exact competition conditions of each market.

Defense of abuse

A critical element for defending an alleged abuse of dominance is its objective justification, interrelated with a commercial rationale. Also, potentially overriding interests (more efficient service for the customer) may counterbalance a prima facie abusive behavior. Proportionality is crucial in any case for the overall assessment of a certain conduct. It must be noted that, especially in cases of alleged discrimination, the prohibition of dissimilar treatment of similar situations is often misinterpreted as a “flat” equality of treatment. However, the details of a specific practice cannot and must not be disregarded, since e.g. the different credit risk and/or sales volume between customers may well justify their different treatment. Comprehensive understanding of the facts of each case, combining vigorous legal analysis and economic competitive assessment, is a prerequisite for grey areas, which is mostly the rule in competition law.

Which are the competition enforcement authorities in Greece?

Generally the competence for the enforcement of Greek law on the protection of free competition (L. 3959/11) lies with the Hellenic Competition Commission (HCC), which is also the National Competition Authority for the application of the equivalent EU provisions (articles 101, 102 TFEU).

However, according to the EU common framework for the liberalization in the sectors of telecoms, postal services and energy, as implemented in Greece, there are separate authorities (National Regulatory Authorities) for these sectors, namely the Hellenic Telecommunications and Postal Services Commission (“EETT”) and the Regulatory Authority...
of Energy (“RAE”). Together with the rest regulatory sector-specific powers held by these NRAs, the latter are further accordingly competent for enforcing L. 3959/11 in the above sectors, although co-operation with or referral to HCC is also possible.

What is the structure of the Hellenic Competition Commission?

Under L. 3959/11, the Hellenic Competition Commission (HCC) consists of 8 members, out of whom 6 are full time appointees (the Chairman, the Vice-Chairman and four Commissioners). Given that, under the previous regime of L. 703/1977, the HCC consisted of 9 members (1 Chairman, 4 Commissioners and 4 part-time members), there are transitional provisions for passing to the new structure.

Investigations can be initiated either ex officio (e.g. in cases of public interest or in cases that a certain anticompetitive pattern has come to the attention of the authority etc) or upon a complaint submitted by a third party (usually competitor, supplier or customer).

The investigative powers of the General Directorate of Competition (part of HCC) are specifically provided for in L. 3959/11 and are generally in line with the typical similar powers of the European competition authorities. Investigation requires a written mandate from the Chairman of HCC, which defines the scope and legal basis of the investigation and it also mentions the sanctions applicable in case that the enterprise fails to comply and to co-operate. As the case might be, other public officers and/or authorities can also be involved in the investigation carried out by the officers of the General Directorate of Competition, which also have to comply with constitutional restraints (e.g. in case of investigation in the residence of the representatives of an enterprise, Court authorisation is required).

Failure of an enterprise to comply with the investigation (e.g. refusal to provide information or submission of misleading data or concealment of documents) entails administrative and criminal sanctions.

As soon as the investigation is concluded, the General Directorate of Competition assesses the findings of the investigation and proceeds, in co-operation with one of the Commissioners, with the drafting of a recommendation (similar to Statement of Objections) to the HCC. Such recommendation is notified to the parties involved, in order to express their position both orally and in writing before the HCC (right of prior hearing). Decisions issued by HCC are, at a fist stage, subject to appeal (“prosygfi”) before the competent Administrative Court of Appeal and, subsequently subject to petition for annulment (“anairesi”) before the Conseil d’Etat.

Sanctions against undertakings and individuals

According to article 25 of L. 3959/11, HCC has the power to:

- oblige the undertakings to cease the violation and refrain from repeating it in the future,
- accept commitments offered by the undertaking and render such commitments mandatory,
- impose behavioural or structural remedies, on a proportional basis,
- address recommendations and threaten the undertakings with fine/penalty in case of repeating the violation,
- forfeit the fine/penalty, in case it is certified by HCC’s decision that the violation has not ceased or has been repeated,
- impose fines against the violating undertakings.

The fine cannot exceed 10% of the aggregate turnover of the undertaking for the previous fiscal year, depending on the gravity and the duration of the infringement. EC guidelines for the calculation of the fine are also followed by HCC.
As per the provisions of L. 3959/2011, there are three new elements on administrative sanctions:

a) In case of group of companies, the aggregate group turnover is to be considered.
b) In case that the economic benefit enjoyed by the undertaking can be measured, then the fine cannot be less than that (even if it exceeds the threshold of 10%).
c) Individuals involved in violations of L. 3595/2011 face a two-fold personal liability: On the one hand, they are jointly liable together with the undertaking for the payment of the above fine (this existed also under L. 703/77). On the other hand, a separate fine ranging from €200.000 to €2.000.000 may be imposed against them, in case that they have been involved in preparing, organizing or committing whatsoever the violation. Criminal sanctions are also threatened in case of violation of L. 3959/2011 and/or articles 101/102 TFEU. According to article 44 of L. 3959/11, distinction is made, depending on the type of violation:

- horizontal violations → imprisonment ranging from 2-5 years and fine ranging from €100.000 - €150.000.
- vertical violations → fine ranging from €15.000 to €150.000.
- abuse of dominance → fine ranging from €30.000 to €300.000.

**Commitments**

The 'commitments decision' procedure under Regulation 1/2003 and Greek competition law, provides HCC with a mechanism to dispose of competition law cases by way of a formal 'settlement', similar to a US consent decree. The involved undertaking may voluntarily propose HCC to undertake certain behavioural or structural commitments to terminate the alleged infringement (either anti-competitive agreement/decision/concerted practice or abuse of dominance).

HCC can consider such commitments and render them mandatory if and when: (a) they remove HCC’s initial competition concerns, (b) the case is not one where a fine would be appropriate (this therefore excludes commitment decisions in hardcore cartel cases), (c) efficiency reasons justify that the Commission limits itself to making the commitments binding, and does not issue a formal prohibition decision.

It must be noted that HCC is considered to have wide discretion in accepting commitments.

**Leniency**

As from 2005, leniency has been introduced in Greek competition law. HCC has rendered Decision No. 299/V/2006 on Leniency, following in general terms the respective EC Leniency Notice.

Leniency applies only in horizontal cartel cases and not in cases of vertical cartel cases or in cases of abuse of dominant position. As per the EU approach, distinction is made between

- full immunity from fines, in case the undertaking is the first to submit evidence for a cartel that the HCC did not have, at the time of submission, sufficient evidence to carry our an investigation or find out the infringement, and
- reduction of fines, in case the undertaking provides the HCC with evidence of the alleged infringement, which represent a “significant added value” when compared with other information already possessed by the HCC.

The undertaking must also: (a) co-operate fully, actively and on a continuous basis throughout the investigation procedure and provide the HCC with all information and evidence which are at its possession or might become later available to it. (b) end its participation in the alleged infringement, as soon as it submits the information to the HCC. (c) it must not have encouraged other undertakings to participate in the infringement.
(d) it must treat with full confidentiality the fact that it has applied for leniency, until the completion of the investigation and the drafting of the Report of the HCC on the case (e) it must not have participated in the past in any cartel case, detected and confirmed by a National Competition Authority or the European Commission. 

As far as we know, there has only been one leniency request with regard to the investigation of the HCC for cartel activity in the milk sector, but the request has been rejected for other reasons (there has been a major scandal in Greece with this case, involving allegations against the ex Director General and other parties for alleged blackmailing and other criminal violations).

**Private enforcement**

Private enforcement is possible according to the general provisions. In this sense, it is possible to seek compensation before Civil Courts for any damage suffered due to the prohibited abusive conduct. Such claim is grounded on article 914 of Civil Code. The damages could cover any proven losses suffered thereof, i.e. both direct losses and loss profits, but not punitive damages.

In 2010, there has been a legislative effort to facilitate such claims, in the framework of the respective EU white paper, but it has not proceeded yet.

There have been some rare Court cases, regarding refusal to deal and access to essential facilities in telecoms sector, which combined abuse of dominance with the general provisions for abuse of right (Civil Code 281).

Other than that, there are some competition cases that have been brought before Civil Courts, but judges mostly lack expertise and this creates significant hurdles to effective judicial protection.
Which are the objectives of the unfair competition legislation and the relevant interests protected?

The objective is to assure that the competitors’ efforts to prevail within the relevant market are based on the principle of “the most efficient offer” and not on other means, which do not comply with this principle. Within this framework, the competitor offering the best price-quality relationship is supposed to gain advantage over the rest of the players, since consumers will prefer these products/services offered. Apart from protecting the consumers’ best interests and allowing the proper functioning of the relevant market, the prohibition of unfair competition practices mainly protects the competitors against whom such unfair practices are targeted.

Which is the Greek legal framework concerning unfair competition and its systematic structure?

The main legislation regarding unfair competition in Greece is Law 146/1914. Considering its “age”, this Law has undergone only minor amendments, the latest and most significant of which was made by Law 3784/2009. Law 146/1914 follows the structure and systematic approach of its German ancestor (UWG, 1909): a general clause (sec.1) prohibits practices in all commercial, industrial and agricultural transactions, undertaken for competition purposes, which are contrary to business morals and ethics. Said section is followed by further sections covering specific unfair competition behaviors (such as misleading advertising, defamation, exploitation of other parties’ goodwill and infringement of third parties’ distinctive marks etc.). The practices prohibited under Law 146/1914 may also fall into the scope of other related Laws, such as Consumer Protection Legislation, Antitrust legislation and Market Decrees. In addition, Greece is a member to and has ratified the International Paris Convention of 1883 (as in force), the WIPO Convention of 1967 and the TRIPS Agreement of 1994.

Which is the applicable law in cross-border unfair competition cases?

Unfair competition practices constitute a special category of torts; according to sec.26 of the Greek Civil Code, the applicable law in cases of cross-border torts is the law of the State where the tort took place. Consequently, unfair competition practices that take place within the Greek territory are governed by the Greek law of unfair competition. As far as the EU Member States are concerned, Regulation 864/2007 (Rome II) includes a specific provision regarding the applicable law in unfair competition cases, according to which: “The law applicable to a non-contractual obligation arising out of an act of unfair
competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected”.

Whom may a competition practice possibly concern?
Law 146/1914 applies to all businesses of any type (sole traders, partnerships, incorporated companies) providing products and/or services, active in the fields of commerce and/or industry and/or agriculture, which either engage in unfair competition practices or are affected by such; besides, an unfair competition practice may be targeted against specific competitor(s) and/or have a general jeopardizing impact on the relevant market.

When does a business practice constitute an unfair competition act according to the general clause (sec. 1)?
When it meets the following criteria:

- It is undertaken by a competitor in the course of commercial and/or industrial and/or agricultural transactions.
- It enhances (or is capable of enhancing) the position of the business entity in the relevant market vis a vis its competitors, either present or potential. A competitive relationship is also required, it is however perceived in a very broad sense, even covering cases of indirect or potential competition.
- It is undertaken for competition purposes, but not necessarily with the intention to harm the competitors’ interests.
- It is contrary to honest practices, the content of which is formulated and interpreted in light of the current business morals and ethics.

It is important to note that there are no per se unfair practices under Law 146/1914 and each case is dealt with ad hoc. Factors such as the means, strength and duration of the business practice and the jeopardizing of the proper functioning of the relevant market are seriously taken into account for the characterization of such practice as unfair.

Which are the most common business practices which fall into the scope of the general clause (Sec.1)?
The following case groups have been formed by Greek case law and legal theory:

- **Improper solicitation of customers**: The competitors’ clientele is not protected as such; after all, the battle to gain new customers is the quintessence of competition. There are, however, certain means that, when manipulated by a competitor, render the customers’ solicitation unfair. Typical relevant cases are: surreptitious advertising (mainly through sponsoring and product placement when not recognizable and indicated as such), offering gifts/prizes with the product or service when the value of the former is much higher than that of the latter or the gifts/prizes are of completely different nature, direct marketing through unsolicited phone calls (cold calling) and emails without the express consent of the recipient and emotive advertising causing strong feelings of sympathy, horror, disgust etc. which are capable of influencing the consumers’ purchasing behavior.
Exploitation of third parties’ goodwill, organization and labor: All practices in this category, i.e. the appropriation of competitors’ reputation and goodwill (image transfer), the imitation of intangible assets forming the business entity’s goodwill (unless they are registered trademarks, patents or designs) and the disorganization of a business entity (mainly through solicitation of personnel) are not considered to be per se unfair, unless there are additional circumstances justifying the unfair character of such practices. For example, according to Greek case law, the slavish imitation of product designs and design packaging as well as of advertisements or advertising concepts constitutes an unfair competition practice. Furthermore, the solicitation of personnel is unfair, primarily when there is an incitement to breach of employment contract and/or the competitor aims at the disorganization of the competitive business entity by means of depriving it of its key employees and/or when the solicitation is used as a method to acquire the competitors’ trade secrets.

Impediment of competitors: These practices are considered to be unfair when they result in preventing a player from entering the market and/or offering his products/services. Such a result is mainly achieved by means of boycotting (apart from cases in which a competitor is bound by contractual exclusivity clauses or the boycott is defensive) or predatory pricing (depending on the existence of the purpose to squeeze the competitor out of the market; according to Greek case law, a strong indication of such intent is the continuous and systematic predatory pricing for a long period of time without any plausible commercial justification). Discrimination between competitors by the supplier may also, under specific circumstances, constitute an unfair competition practice, although such cases mainly fall under the scope of antitrust legislation (Law 3959/2011).

Breach of legal/contractual provisions: These practices may also, under certain circumstances, be considered to be unfair: examples of such legal provisions are the prohibition of supplying illicitly acquired products in the market and the obligation to comply with the legislation regulating the functioning of the market (i.e. predatory pricing - sec.24 of Law 2941/2001 as in force - and the codified Market Decree 7/2009 concerning, among others, the limitation of the profit margin for specific products and the implementation of discounts, rebates and promotional campaigns). The breach, also, of contractual obligations (non-competition or exclusivity clauses) may constitute an unfair competition practice.

Are there specific provisions in Law 146/1914 concerning advertising campaigns?
Misleading advertising is prohibited under sec.3 of Law 146/1914 and sec.9 §§2-4 of Law 2251/1994 (consumer protection). Advertising has to comply with the principle of truthfulness, although a degree of exaggeration is allowed, as long as the consumers are used to such exaggerations and thus the truthfulness principle is not violated. A critical factor for the characterization of an advertisement as misleading is that the statement communicated is deceptive or misleading for the average consumer of the specific target group to which the advertisement is directed. Sec.3 indicatively refers to deceptive statements regarding the origin, method of production, quality, quantity, pricing, alleged awards of the product/service etc.
Comparative advertising, governed by sec. 9§8 of Law 2251/1994 (Directives 84/450/EC and 97/55/EC) is considered to be consumer friendly, informative and is in principle permitted. However, the comparison has to meet the following conditions: it must not be misleading, it must refer to goods or services meeting the same needs or purposes, it must objectively compare material, relevant, verifiable and representative features, it must not create confusion, it must neither tarnish the reputation of a competitor nor blur his trademarks, distinguishing marks etc. and it must not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name.

Are there any specific provisions in Law 146/1914 concerning harmful allegations against the reputation/goodwill of a competitor?

Disparagement constitutes an unfair competition practice and is prohibited by sec.11 and 12 of Law 146/1914. Plain defamation (sec.11) is considered unfair provided that it is undertaken with a competition purpose and the allegations are untrue; liability in such cases is objective, meaning that knowledge of such untruthfulness is not necessary on the part of the offender. Libelous defamation (sec.12), on the other hand, constitutes an unfair competition practice, subject to the condition that the offender is aware of the untruthfulness of the allegations, regardless of whether or not there is a competition purpose; libelous defamation can, under certain circumstances, also constitute a criminal offense.

How can a business entity’s IP portfolio (marks, brands, trade names etc.) be protected under Law 146/1914?

Sec. 13-15 of Law 146/1914 provide protection for unregistered marks, such as brands, trade names, distinctive titles, distinctive marks, packaging designs etc., subject to the condition that they have acquired distinctiveness through use in the relevant market. In addition, sec. 13-15 can provide supplementary protection to registered IP rights (trademarks, patents etc.) in cases of infringement, which are not covered by the relevant specific legislation. The standard required to prove such infringement is the existence of likelihood of confusion to the average consumer, deriving from the identity/similarity of both marks and products/services. Cases of conflict between unregistered IP rights (or between a registered and an unregistered right), are resolved through the application of territoriality and time priority principles. Sec. 13-15 provide both civil law and criminal law protection against such infringements.

Which is the protection provided in cases of leak of trade secrets/know-how?

The value of enterprises lies increasingly in intangible IP rights and associated trade secrets and know-how. It is therefore of vital importance to appreciate their vulnerability, especially where technology facilitates the infringement by either staff members or competitors. According to sec. 16-18 of Law 146/1914 the defense against trade secret infringements provides for both civil law claims and criminal law procedures.
Has Greece transposed Directive 2005/29/EC concerning unfair business-to-consumer commercial practices?

Directive 2005/29/EC was transposed through Law 3587/2007, which added sec. 9a-9i to Law 2251/1994. Sec. 9c consists of a general clause prohibiting unfair commercial practices, while sec. 9d,e,g specifically prohibits misleading and aggressive practices and sec. 9f,h provide a “black list” of such practices prohibited per se.

Internet and unfair competition: New challenges for an old legal regime?

The field of internet offers a wide spectrum of opportunities for competitors to enhance their market position. Practices like domain grabbing and cyber-squatting may constitute impediment of other competitors as well as exploitation of their goodwill and thus be prohibited under sec.1 of Law 146/1914. Furthermore, the utilization of a third party’s distinctive marks as meta-tags or Google ad-words for the search engine optimization of a business’ website may also be considered as an infringement of such third party’s distinctive marks, which are protected under sec. 13-15 or even constitute an impediment and exploitation of its goodwill (sec.1).

Which are the legal means of defense? What can be claimed and how fast should the reaction be?

Any business entity, including consumer associations – but not a consumer individually – offended by an unfair competition practice is entitled to legal protection under Law 146/1914. The offended party, regardless of whether an extrajudicial statement has been sent to the offender, can file an application for the initiation of interim measure procedures (sec.20), claiming the cessation of the unfair competition practice and the abstention from such practices in the future. The court ruling upon said application is of provisional nature and it must be followed by the filing of a lawsuit within one month from its issue date. Said lawsuit may include the following claims: cessation of the unfair competition practice and abstention from such practices in the future, as well as, a claim for damages, when there is intent or negligence on the part of the offender. The time limit for the filing of such action is 18 months from the time that the plaintiff became aware of the practice and the offender and, in any event, 5 years from the time that the practice took place. Law 146/1914 also includes criminal law sanctions for certain practices, although most of them are only prosecuted after the filing of a complaint by the offended. Relevant administrative law measures are also provided in other specific laws (for example sec.11 of Law 3377/2005, as in force, concerning the seizure and destruction of unlawful imitation merchandise).

Is there a quicker and more efficient way of protection against improper/illegal advertising/communication?

As in most EU countries, advertising self regulation is recognized in Greece. The Greek Advertising Self-Regulation Council (SEE, www.see.gr) is an independent, non-profit making civil law company, which is competent for the monitoring and implementation of the provisions of the Greek Code of Advertising and Communications Practice. Complaints against any type of advertisement/communication (TV, radio, press, internet, product packaging etc.) are addressed in writing to the First Degree Committee. The case is
brought before the First Degree Committee within 6 days from the communication of the complaint to the other party. The relevant decision is issued within 3 working days and is immediately enforceable. A right of appeal before the Second Degree Committee is also provided; the hearing date is set within 10 days from the filing of the appeal application and the Second Degree Committee’s decision is also issued within 3 working days.

Unfair competition law and antitrust law: incompatible or interconnected?
Despite their different purposes, unfair competition law and antitrust law complement one another, since they both aim at protecting the economic independence of the “players” concerned and the proper functioning of all relevant markets. The example of predatory pricing, which may fall under the scope of both legal regimes, eloquently highlights the interconnection of unfair competition and antitrust law. In fact, the abuse of economic dependence was recently transferred (2009) from antitrust legislation to sec.18a Law 146/1914 and now constitutes an unfair competition practice. Such practice can be prohibited, especially in cases involving the imposition of unjustified contractual terms, terms resulting in discrimination and the sudden and unjustified interruption of long-term business relations.
What is the importance of State Aid rules?

Control of aids granted by States to undertakings is one of two main fields of EU competition policy, the other being the protection of free competition. Competition policy is a basic tool of EU action, aiming to develop those competitive forces that will allow markets to function properly, in order to secure the optimal allocation of available funds, the reduction of regional inequalities and the competitiveness of European enterprises. State Aid policy constitutes a crucial parameter of EU competition policy. By favoring certain undertakings to which they are granted, State Aids cause disorder to the balance achieved among market forces, as they may affect undertakings active in the same sector, in the same or in another member-State. Such State interventions prevent the internal market from developing freely and distort competition, as they usually diminish the incentives of undertakings to improve their efficiency, with further impact on the economic prosperity and unity of the common market.

What is considered as incompatible State Aid?

The Treaty on the Functioning of the European Union (TFEU) sets, in its article 107 (1)\(^1\), the general rule that State Aids are in principle incompatible with the internal market. While the above provision does not contain a definition of State Aid, it does provide those elements, upon which the European Commission and the Court of Justice of the EU (CJEU)\(^2\) were based to identify State Aid.

This definition is very wide: “The notion of state aid essentially covers all economic advantages granted directly or indirectly through State resources in any form whatsoever which distort or threaten to distort competition and affect trade among member-States by favoring certain undertakings or the production of certain goods”.

What are the conditions of State Aid?

The essential elements of State Aid that derive from the above definition are the following:

- The grant of an economic advantage
- The direct or indirect funding through State resources,
- The preferential treatment of certain undertakings or the production of certain goods, and
- The possibility of distortion of competition and effect on inter-State trade.

It must be stressed that these conditions are cumulative. All four must concur simultaneously for an economic advantage to be considered as State Aid. It should also be noted that all of these conditions are interpreted broadly both by the Commission and the ECJ.

\(^{1}\) Former article 87 (1) of the Treaty establishing the European Community (TEC).

\(^{2}\) Formerly European Court of Justice (ECJ).
When is there an advantage conferred to the recipient?
The main rule established by the ECJ on the matter, is that the substance of a State measure, and not its form, is the criterion when defining the notion of aid. The essential point is that to constitute aid, a measure must confer an advantage on the recipient. The Commission has not provided a full list of aid types. These include, but are not limited to, direct subsidies and grants, tax exemptions, exemptions from parafiscal charges, preferential interest rates, favorable loan guarantees, the provision of land or buildings on special terms, indemnities against losses, the deferment of the collection of fiscal or social contributions, dividend guarantees etc. The ECJ has made it clear that the concept of State Aid covers not only positive benefits, but also measures that mitigate the charges an undertaking would normally bear. Not strictly financial advantages are also considered to constitute an aid, as long as their monetary value can be assessed. The advantage may consist of a direct grant through State resources, or an indirect loss of State resources that confer an advantage to the recipient.

What is considered as granted through State resources?
Only advantages granted directly or indirectly through State resources are regarded as aid. It is clear, that this can include regional as well as central government. It can also include advantages granted by a public or private body designated or established or controlled by the State.

What is considered as preferential treatment?
An aid granted by the State constitutes preferential treatment if it confers an advantage to certain undertakings or the production of certain goods that places them in a more favorable position in comparison to their competitors. What is essential is that certain undertakings or sectors are favored preferentially, while others are excluded. A comparative approach is therefore required. On the other hand, general measures of economic policy applied to more than one economic sectors and based on objective criteria will not by themselves be classified as aid. However, the dividing line between general measures of economic policy and State Aids may be a fine one.

When an advantage considered to distort competition and affect inter-State trade?
Competition is deemed to be distorted in the sense that trade between EU member-States is affected, if aid strengthens the financial position of an undertaking as compared to others within the EU. The relatively small amount of the aid, or the relatively small size of the recipient, does not, as such, exclude the possibility of inter-State trade to be affected; neither does the local character of the service provided by the recipient undertaking preclude an effect on inter-State trade, since the aid may render it more difficult for other undertakings from other member-States to penetrate that market. It is not necessary for the effect to be proven; it is sufficient to show that trade might be affected.
In this context, the notion of an “undertaking” is treated in the broadest sense, based on an economic or functional approach rather than a legal one. What matters in this perspective, is that a given entity exercises an economic activity, regardless of its legal status or its source of funding. Even state-controlled entities or public authorities with economic activity are subject to State Aid rules, although specific rules may apply in some cases.

Are there any exceptions to the incompatibility rule?
The general rule that State Aid is incompatible with the common market has several exceptions; these draw the limits within which EU member-States may grant subsidies, aids,
tax exemptions etc. to individual undertakings and economic sectors. Such exemptions are outlined in article 107 (2) and (3) TFEU and are further detailed through specific legislative texts. The exceptions to the incompatibility rule can be classified in two main categories: The first category, with a more limited practical importance, contains types of aid deemed a priori to be compatible with the common market, as provided in article 107 (2). These include: (a) aid of a social character, which is granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned, and (b) aid to make good damages caused by natural disasters or exceptional occurrences. The second category, with a broader scope of application, contains types of aid that may be deemed to be compatible with the common market, as provided in article 107 (3). These include (a) aid to promote economic development of areas with a low standard of living or with serious underemployment, (b) aid to promote the execution of an important project of common European interest (e.g. environmental policy), (c) aid to remedy a serious disturbance in the economy of a member-State – which, although very rarely invoked, may play a serious role in Greece in the near future – (d) aid to promote culture and heritage conservation, and (e) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest – the latter being the most significant of the abovementioned exceptions. Moreover, within the frame of the exemptions outlined in the Treaty, the Commission has issued regulations and guidelines, regarding certain types of aid to specific economic sectors (“exempted sectors”) and stipulating that these shall be regarded as compatible with the common market, subject to certain terms and conditions specific to each type of aid.

**Which exemptions are most often applied in Greece?**

Taking into account the specific characteristics of the Greek economy (such as a substantially different level of economic growth among its different regions; the relatively small size and large number of active enterprises; focus on the tertiary sector versus heavy industry) some of the abovementioned exempted sectors, governed by specific rules in each case, are of greater importance to an investor active in the Greek market. These include the following:

- Regional aid, usually supported by EU funds, including investment incentives laws. This is usually linked to an initial investment, job creation and/or the restructuring of the activities of an existing undertaking. The current Greek investment incentives Law (L. 3908/2011) has been brought into force this year, replacing the previous L. 3299/04.
- “De minimis” aid, for total amounts of aid not exceeding €100,000 in three years.
- Aid to small and medium-sized enterprises.
- Training aid.
- Research and development aid.

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3. Mainly Regulations of the European Commission, by delegation from the Council of the EU, as well as informal rule-making through guidelines issued by the Commission.
4. See e.g. below main references to those exemptions most often applied in Greece.
What about aid granted to activities of public interest?

There are specific rules applicable to State measures (subsidies or other favorable regimes) that are regarded as compensation for the services provided by undertakings in order to discharge public service obligations. This is important in Greece, where the notion of “public interest” is quite broad and several economic activities are more or less closely supervised by the public sector, a typical example being undisrupted air and maritime transport to remote islands throughout the year.

In brief, for an undertaking to receive aid as compensation for public service obligations (PSO), such obligations must be clearly defined in advance and the relevant compensation must be calculated proportionally and in a transparent manner. These rules apply to both private and State-controlled entities that have been assigned with general economic interest obligations.

How are State Aids controlled?

The only competent authority to monitor State Aid measures and control their compatibility with the internal market is the European Commission, excluding any discretionary power of member-States on the matter. The monitoring procedure for State Aid is outlined in article 108 TFEU.11

The monitoring system is in essence twofold: State Aids are divided into: (a) existing ones, which are kept under review by the Commission, and (b) new ones – these are of greater interest to a potential investor – which are subject to a procedure of prior notification and preliminary review. Article 108 (3) provides for the prior notification and preliminary investigation procedure, which is essential for the monitoring by the Commission of any aid proposal. Member-States are therefore under a duty to notify the Commission of any aid prior to granting it; they may not implement the aid during the period in which the Commission undertakes its initial review of the proposed aid (“standstill clause”).

Compliance with the procedure of article 108 is of paramount importance. A State Aid that has not been subject to prior notification and review by the Commission is deemed to be illegal, even if it is essentially compatible with the common market as regards the rules set out in article 107, and may be recovered at any time. “Compatibility” and “Legality” of an aid are two distinct, independent notions. However, special rules applicable to aid in “exempted sectors”, as described above, may also provide for exemption from the prior notification obligation.

What can the Commission do?

The powers of the Commission are provided for in Council Regulation 659/1999. Following notification of a planned aid, the Commission may issue the following decisions:

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10. Such rules have been laid down by the ECJ (Altmark case, C-280/00) and have since been specified by the Commission (Decision 2005/842/EC).

11. Former article 88 TEC. The procedure is further specified in Council Regulation 659/1999.
- Decision declaring that the notified measure does not constitute State Aid.
- “Decision not to raise objections”, meaning that following a short preliminary review the Commission has no doubts that the notified measure constitutes State Aid compatible to the common market.
- “Decision to initiate the formal investigation procedure”, meaning that the Commission, after a preliminary examination, has doubts as to the compatibility of a notified measure and decides to initiate further proceedings.
- “Positive decision”, meaning that, following a longer formal investigation procedure, the doubts of the Commission have been raised and the aid is deemed to be compatible with the common market.
- “Conditional decision”, where the Commission may attach conditions to a positive decision, subject to which an aid may be considered compatible with the common market, and may lay down obligations to enable compliance with the decision to be monitored.
- “Negative decision”, meaning that the Commission finds that the notified aid is not compatible with the common market and decides that the aid shall not be put into effect.

These decisions may be challenged by the parties involved – member-States, intended beneficiaries of the aid, or competitors – before the General Court of the EU. If the State concerned does not comply with the abovementioned decisions within the prescribed time, the Commission may refer the matter to the CJEU directly.

**How long does the reviewing procedure take?**

Council Regulation 659/1999 sets time limits as to the duration of each step of the abovementioned procedure. As a rule, the preliminary review following notification of a planned aid must be completed within two months. If the Commission needs more time, the formal investigation procedure must be initiated. This latter procedure may last up to 18 months; however, the CJEU has held that in complex cases this time limit may be unilaterally extended by the Commission to a reasonable extent.

**What should an investor check before receiving an aid?**

The duty to notify the Commission of any planned aid prior to granting is incumbent on member-States alone, and not on potential recipients. However, any investor should make sure in advance that any form of advantage through State resources that is to be received, does not constitute unlawful State Aid. This mainly includes control of its legality, i.e. whether the measure falls within one of the sectors exempted from the prior notification obligation, or it has been duly notified and approved by the Commission. In case of doubt, the recipient should always consult the competent national authority and expedite the prior notification procedure.

**What if a competitor is suspected to receive unlawful State Aid?**

The Commission examines information from whatever source regarding alleged unlawful State Aid. This includes the prior notification procedure described above, regular cooperation of the Commission with member-States, as well as information provided by any third party. Any enterprise active within the EU may notify the Commission of a suspected unlawful State Aid to a competitor by lodging a complaint form provided by

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12. Former European Court of First Instance.
the Commission. The Commission will assess all available information and may initiate an investigation procedure against the member-State concerned if doubts are raised as to the legality and compatibility of the alleged aid.

What happens if an aid is found to be unlawful?

As a matter of principle, illegal State Aid should be repaid, as derives from article 108 (2) TFEU. The recovery of unlawful State Aid is reserved to member-States, following a decision of the Commission, which has exclusive competence to decide for the recovery. Repayment obligation covers every advantage conferred by the illegal aid, including interest, and is subject to a limitation period of 10 years before any action has been taken by the Commission. The obligation may not be deflected by claims that repayment entails difficulties for the recipient, even if this means winding up of the recipient company. Moreover, under certain circumstances the Commission may issue injunction decisions, requiring member-States to suspend any unlawful aid or to proceed to its provisional recovery, until the formal investigation procedure is completed. Recovery decisions may be challenged before the General Court of the EU. In case of non compliance of a member-State with a recovery decision, the Commission may refer the matter to the CJEU.

13. In Greece, recovery of unlawful State Aid is carried out pursuant to the provisions of the Code for the Collection of Public Revenues (“KEDE”); the relevant administrative acts may be challenged before Greek courts.
Which is the antimonopoly legislation in force?

Law 3959/2011 “for the protection of free competition” (the Antimonopoly Law) applies to the control of monopolies.

What article of the Antimonopoly Law deals with monopoly?

Article 2 of the Antimonopoly Law is designated to deal with monopoly and market power. It focuses on the unilateral behavior of undertakings which hold a “dominant position”. The Antimonopoly Law does not define the word “dominant”. Dominance is defined by Hellenic Competition Commission (HCC) as a position of economic strength enjoyed by an undertaking, which enables it to prevent effective competition and to behave independently of its competitors, customers and ultimately the consumers. Dominance is established by indicators of which sometimes the most important is the market structure. In view of this dominance may be assessed by market share, although specific thresholds are not provided in the Antimonopoly Law. Other significant factors taken into consideration by the competition authorities are the ability to restrict output or increase prices above the competitive level in order to earn monopoly profits. What matters is substantial market power which endures for a significant period of time. This is certainly the case for state owned or state created monopolies.

The Antimonopoly Law does not specifically prohibit the granting of a monopoly, but it prohibits actions, agreements and certain conduct, that permits to the monopoly to be organized in such a way as to infringe the completion rules. Power over price is often the starting point of the HCC in order to evaluate infringements of the competition rules and to assess the effect of monopolization of a specific market.

Article 2 of the Antimonopoly Law deals with the problem of abuse of a dominant position. Article 2 provides for a non-exhaustive list of types of abuse. In particular, an abuse may consist of:

- directly or indirectly imposing unreasonable purchase or selling prices or other unfair trading conditions;
- limiting production, consumption or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions, and in particular by unjustifiably refusing to sell, buy or enter into other transactions, thereby placing some enterprises at a competitive disadvantage;
- making the conclusion of agreements conditional upon the acceptance of additional obligations, or the conclusion of additional agreements that, by their
nature or according to commercial practice, are totally unrelated to the subject of such contracts.

Some of the above practices, such as price fixing, limiting production or sales, allocating markets or clientele, setting minimum resale prices or prohibit passive sales, have been considered by the HCC as per se illegal.

Furthermore and in view of the fact that some sectors are still monopolized by state owned or state created monopolies (as the electricity sector ruled by the state owned Public Power Corporation or the gaming sector ruled by the partially state owned monopoly OPAP) monitoring of breaches of the prohibitions included article 106 TFEU (former article 86 EC) is very important. It has been ruled by the Supreme Administrative Court that any person who takes offense by violation of the provisions of article 86 EC (now article 106 TFEU), may bring claims for breach before the Greek courts and dispute the validity of an agreement due to infringement of article 86 EC (Decision No 2176/1996 of the Council of State).

Article 46 of the Antimonopoly Law provides that the law applies to any restrictions on competition which produces effects or is capable of producing effects in the national market, even if such restrictions derive from agreements between undertakings, decisions by associations, concerted practices between undertakings or associations, concentrations of undertakings, which take place outside Greece or by undertakings or associations that are not resident in Greece.

**Does merger control regulation cover attempts of undertakings to become monopolies?**

Application of the merger control regulations included in the Antimonopoly Law aim to prevent the approval of a concentration, if such lead to creation of a monopoly, whether by monopolization of a market (creating or considerably enhancing dominant position by undertakings) or by a significant restriction of competition on the entire relevant market or a substantial part thereof. Barriers to entry or expansion are crucial when the HCC determines whether or not an undertaking is a monopolist or intents to become one through a concentration. Other aspects taken into consideration by the HCC are:

- the available assets and the strength of the financial position of the undertakings involved in a concentration,
- the existence of alternatives for the consumers,
- the market shares and the undertaking’s superiority over its competitors in terms of technological development and commercial or industrial know-how, and
- access to raw materials.

**Is there any other legislation for particular market sectors?**

There is a specific law (Law 3592/2007) that applies to the markets of the media sector (television, radio, newspapers, magazines) having as objective to safeguard pluralism, transparency and healthy competition in the media sector. The law on media introduces thresholds for dominance, depending on which of the media sector markets the undertaking or person is active (ranging from 25% to 35%).

In the energy sector the main laws that liberalized the Greek electricity market (Law 2773/1999, as amendment and supplemented by ministerial decisions, Law 3426/2005,
Law 3468/2006 on Renewable Energy Sources, as amended by Law 3851/2010 and Law 4011/2011) and the Greek gas market (Law 3428/2005) provide antimonopoly rules and aim to the gradual liberalization of these markets, previously ruled exclusively by state monopolies. The energy laws and regulations provide competition rules and incentives to private investors. The above regulations enforce competition rules regarding access to grid and other infrastructures that resemble natural monopolies.

Which authorities are charged with the responsibility of enforcing Antimonopoly Law and related regulations? Details about bodies having responsibility over specific market sectors.

The authority which is mainly responsible for the enforcement of Antimonopoly Law to all market sectors is the Hellenic Competition Commission (the HCC). The HCC protects the proper functioning of the market and ensures the enforcement of the rules on competition, certifies any violation of the Antimonopoly Law and EU legislation, collects and examines every relevant document, imposes the fines in cases of violation and penalties for non-compliance. HCC acts as an independent authority and has administrative and financial autonomy.

For specific, recently liberated, industries (as telecommunications and energy) the relevant regulatory authorities are also assigned with the application of antimonopoly rules. The Hellenic Telecommunications and Postal Commission (EETT) is the national regulatory authority of the telecommunications sector, which supervises and regulates the relevant markets of telecommunications and postal services and ensures the implementation of the Antimonopoly Law in these markets. EETT has discretionary powers to seek the opinion of HCC in cases it deems this necessary.

In the energy market, the Regulatory Authority for Energy (RAE) is entrusted with the monitoring and control of the electricity market and compliance with antimonopoly rules. RAE has mostly consultative and recommendatory powers and its role is to facilitate free and sound competition in this sector in order to provide best services to the end-user.

All other markets, fall under the jurisdiction of the HCC. Article 24 of the Antimonopoly Law specifies the terms of co-operation between the different authorities, given that in most cases co-ordination between the authorities is necessary.

Is the HCC able to prevent regulatory obstacles to competition?

HCC has an improved advisory role, under the new Antimonopoly Law (Article 23 (1)). The Antimonopoly Law enhances the power of intervention of the HCC for the removal of regulatory obstacles of competition. HCC may also express an opinion regarding the provisions of draft laws and regulations upon request made by the issuing authority. Furthermore the HCC has the right to intervene to certain sectors of the economy and propose the abolishment of legislative provisions that may be responsible for the restriction of efficient competition, as unnecessary legal barriers.

The Antimonopoly Law gives to HCC the necessary independence in order to be able to reduce the market power of state and other monopolies. The President and the Vice-President are appointed under the Antimonopoly Law by the Parliament. According to the previous framework the President was appointed by the Cabinet. This provision is criticized as creating a connection of dependency between government and HCC.
Recently, acting on the basis of article 23(1) the Hellenic Competition Commission issued an opinion (No 12/VI/2011) and proposed the abolition of a Ministerial Decision concerning the distribution of infant milk due to the fact that such regulations imposes entry barriers not justified by public policy considerations. According to the HCC’s opinion, the said regulation imposes entry barriers to potential competitors (e.g. food retailers) and forecloses the retail market, while limiting the freedom of suppliers to use alternative distribution networks and results in the consumer being deprived of choice and potential benefits arising from combining distribution and price competition.

**What are the main sectors in which state monopolies still exist?**

Historically in Greece state monopolies have been operating as closed shops full of restrictive practices, claiming that such modus operandi was necessary in the public interest. This is now challenged. Nevertheless former monopolies, as Public Power Corporation (PPC), still dominate the relevant markets. On 15th July 2011, RAE imposed a fine on the Public Power Corporation (PPC), for a series of breaches of its obligations as the operator of the national Electricity Distribution Network, thereby preventing the development of healthy competition in the Greek electricity market. RAE in its decision held that certain practices of PPC had significant adverse effects on growth and competition in the retail electricity market. According to the RAE’s opinion the responsibility of PPC is increased, given that the company a) holds a dominant position in electricity supply; and b) it has been the only operator and provider of electricity in Greece for many years and, therefore, the distinction between distribution and supply has not been established in the minds of consumers (Operator - Owner of network).

A recent decision of RAE abolished some of the entry barriers in the gas market, as private companies, competitors and the Public Gas Corporation (DEPA), the earlier state monopoly, has been secured a right for access to the grid, following a complaint filed due to the refusal of the Hellenic Gas Transmission System Operator SA (DESFA) to provide access to a private supplier.

The recently voted Law 3986/2011 entitled ‘Urgent measures for the application of the midterm framework for the fiscal and financial Strategy 2012-2015’ establishes a fund responsible to privatize assets belonging to the Greek state, including public enterprises, infrastructures, state monopoly rights, and real property. The privatizations program includes a vast number of state activities -some of them reserved until now for the Greek State solely: as transport and infrastructures, ports, water supply and sewerage services and defense industry. However privatization can lead to private monopolies replacing public ones. It is the challenge of the competition authorities to ensure that privatizations will benefit consumers, especially in sectors that depend on the use of a network, which cannot be easily duplicated or where services are essential and need to be provided “universally” (supply of water, sewage and basic postal and telecommunication services).

**What claims may be brought under the Antimonopoly Law?**

Complaints to the HCC may be lodged in writing in a special form which is available online on HCC’s website (www.epant.gr).
Besides filing complaints, the Antimonopoly Law provides that Greek courts may apply directly Articles 1 and 2 of the Antimonopoly Law and articles 101 and 102 of the TFEU. In view of this any person may bring claims for the violation of competition law before the Greek civil courts and dispute the validity of an agreement on competition law grounds or claims for damages due to infringement of EU and/or Greek competition rules. Under the Antimonopoly Law abuse of one’s market dominating position is punishable criminal act, provided that the perpetrator acts with intent. Claims may be also brought before the Greek Courts for infringement of the prohibitions included in article 106 TFEU.
INDUSTRIAL & INTELLECTUAL PROPERTY RIGHTS
What is a Trademark? What is the function of a trademark?

Under Greek law, the primary and basic purpose of a trademark is to serve as a source identifier, i.e. to indicate a particular origin of a good or service. This is not, however, the only function a trademark serves, given that trademarks also serve a guarantee and advertising/marketing objective.

According to article 1 of the Greek Trademark Law 2239/1994, any sign capable of being represented graphically and of distinguishing the goods and/or services of one undertaking from those of another may be regarded as a trademark. In view of this definition, the term Trademark is used in relation to both goods and services.

What types of trademarks are recognized by law in Greece?

Trademarks may consist of words, names of natural persons or legal entities, pseudonyms, devices/logos, designs, letters, numerals, combinations of numbers or letters (acronyms), sounds (including musical phrases), the shape of product or of its packaging and the title of a newspaper or magazine.

A trademark may consist of a combination of word/name and device/design elements (composite/composition trademarks).

Although not expressly provided by law, slogans can also be protected as trademarks, provided that they possess distinctive power and can function as trademarks (e.g. the slogan “TOP PERFORMANCE, CLEANER ENVIRONMENT”, in Greek, was accepted as a trademark, whereas “EVERY DAY SOMETHING POSITIVE”, in Greek, was rejected).

It goes without saying that in the context of a composite or a device mark, the specific colour shades/combination are considered as a protectable element. On the other hand, a single colour may, under exceptional circumstances, if ever, serve as a mark. Nonetheless, combinations of more than one colour can possess distinctiveness and be used as trademarks in their own right.

“Ordinary” marks differ from collective and certification marks: ordinary marks distinguish the goods and/or services of a particular trader from those of others, whereas collective marks are in fact signs deriving from a membership to a particular association, and certification marks serve the purpose of guaranteeing to the public that the relevant goods or services possess a certain characteristic (material, quality, accuracy etc).

The Greek legislative framework provides for collective marks but not for certification/guarantee marks, as the latter are considered unable to perform an “origin function”.

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What cannot be registered as a trademark? Which are the absolute bars to registration?

Absolute bars impede certain signs from being registered as a trademark, particularly if they 1) are devoid of any distinctive character 2) are merely descriptive, i.e. only describe the kind, quality, properties, quantity, intended purpose, value, geographical origin, or other characteristics of goods or services 3) have become customary in the current language or in the bona fide and established practices of trade.

On the other hand, a sign does not need to be fanciful, original or coined in order to be registrable as a trademark. In this respect, distinctiveness is assessed in relation to the goods/services for which the mark is to be used. Furthermore, distinctiveness and descriptiveness are assessed by reference to the mark as a whole and not in relation to its individual components. Thus, figurative elements may significantly enhance the weak distinctive character of a verbal element.

Deceptive signs cannot be registered. Therefore, the use of terms such as ECO-, BIO and ORGANIC should be used with great caution and under special conditions/certifications: Said terms are banned from use on non-organic food production and general principles on non-misleading advertising apply when they are used on non-food products. With respect to geographical indications, it all depends on whether the geographical indication in question is associated with the products to be covered by the trademark. For example, ALASKA was allowed to registration for electrical goods and BERLIN, inter alia, for clothing and cosmetics.

Terms that are inherently non-distinctive can be protected as a trademark in the event that the public has come to recognize them as marks, in which case the term is said to have “acquired distinctiveness” or “secondary meaning.” Terms can acquire distinctiveness through extensive use and advertising.

A mark will not be registered if it is deemed to be contrary to public policy or to accepted principles of morality. In this case, again, the type of goods/services the sign is intended to cover will be taken into account (e.g. DIAVOLO was registered for perfumery).

Marks consisting of a flag, emblem or similar signs of the Greek state or other state covered by the Paris Convention shall not be registered as trademarks.

Finally, a trademark shall not be registered if filed in bad faith.

How can I find out if my trademark collides with a prior trademark?

If you wish to use or register a trademark, a related search to be conducted by an experienced attorney is recommended, for analyzing the risk of possible objections, oppositions or infringement actions by third parties. Basic searches typically focus on trademark registration databases, while more extensive searches utilize numerous other resources, such as company name and domain name databases, trade publications and the Internet.

How do I claim trademark rights in Greece? Are unregistered marks protected?

Trademark rights are typically established through registration. In practice, however, unregistered rights may be protected under articles 13 to 15 of the Unfair Competition Law. There are no specific statutory conditions outlining the extent and type of use required in order to claim protection for unregistered marks, hence courts carry out this exercise on a case-by-case basis.
What is required for filing a trademark application? Do I need a lawyer?

The minimum requirements for placing an application are:
1. Complete list of goods/services; a single application may be filed for registration of a mark for more than one class of goods;
2. Full name, address, and nationality of applicant;
3. Power of attorney, simply signed and stamped with the company’s seal.
4. If the trademark is in color, 25 specimens reproduced in color.

For the filing of the application, the appointment of a lawyer is compulsory. Furthermore, getting professional advice may prove to be invaluable in terms of “transforming” an otherwise unregistrable sign into a trademark, as well effectively determine the optimum territorial scope of a mark and the most efficient scope of goods and services to be covered.

Does registration in Greece offer trademark protection in other countries as well?

Trademark protection is purely territorial and, as such, a trademark registered in Greece will only be valid within the country. On the other hand, the owner of a national trademark may seek registration in any or all of the countries that are signatories to the Madrid Protocol (over 80 countries in total, including the European Union) by filing a single application. A Community trademark offers protection in 27 countries of the European Union.

What is the lifespan of a trademark registered in Greece?

In accordance with Greek legislation, trademarks can potentially last indefinitely, provided that they are periodically renewed every 10 years following their filing. Unlike the rules applicable in some other jurisdictions, no evidence of trademark use is required for the registration to remain in force. Nonetheless, third parties may initiate cancellation proceedings with regard to a trademark registration if same has not been used for a five-year period.

What are the relative grounds for refusal of a trademark?

An earlier mark can be a relative ground for the refusal of a trademark if there is either a) identity of marks and identity of goods/services respectively covered or b) identity of marks and similarity of goods/services or similarity of marks and identity of goods/services, thus creating a risk of confusion, including the likelihood of association. In the case of marks that have acquired a reputation, the similarity of goods/services is not at issue, when the use of the subsequent mark would, without any due cause, take unfair advantage or would be detrimental to the distinctiveness or the reputation of the earlier mark. The notion of “earlier mark” is defined in paragraph 2 of article 4 of the Trademark Law.

Other prior rights (right to personality, intellectual or industrial property rights other than trademarks, prior company name, etc., paragraph 3 of the aforementioned article 4) can also be considered as relative grounds for refusal, only if invoked by the owner of the proprietary right, in the context of the legal remedies provided for by the Trademark Law. In assessing the likelihood of confusion, a global approach should be taken, having regard to all the factors relevant to the circumstances of the case. With respect to word marks, this assessment must take into account the visual, aural or conceptual similarity of the marks in question, with the aural similarity being of decisive influence. In the case of composite marks, the appreciation process must be based on the overall impression created by the marks, bearing in mind their distinctive and dominant characteristics, with emphasis given
to their word component. In this respect, it is worth highlighting that the average consumer normally perceives a mark as a whole, rather than dissecting it into its various elements. In the context of the global approach, recognition of the trademark in the market is among the factors that are taken into account and the more distinctive the earlier mark, either per se or because of its reputation, the greater the likelihood of confusion will be.

Is there a substantive examination of trademark applications in Greece? How does it work?

The authority in charge of trademarks in Greece and responsible for accepting trademark applications is the Directorate of Commercial and Industrial Property in the General Secretariat of Commerce of the Ministry of Development, Competitiveness and Shipping. Following the filing of a trademark application, a hearing takes place before the Trademarks Committee, where applicants may be represented by their authorized attorney; an ex officio examination is carried out if there are any reasons to reject the trademark application. The examination looks into absolute grounds for refusal and, to a certain extent, at relative grounds as well, subsequently issuing a decision on the basis of the outcome of this examination.

In case of objections, the authorized attorneys representing the applicant may attend the hearing and submit written arguments in support of the application. Moreover, any party with a legitimate interest may intervene at this point and this is obviously preferable to waiting for the Committee's decision in order to file opposition.

What is an “opposition”?

A summary of the decision accepting the trademark application is published in the IP Bulletin of the Government Gazette and any party with a legitimate interest may oppose said decision before the Administrative Trademark Committee. The opposing party does not need to establish use of his prior trademark.

The term for filing the opposition is four months, commencing on the sixteenth day of the month following that of the actual circulation of the Official Bulletin edition where the publication of the contested trademark appears.

If no oppositions are filed during the opposition period, the mark will proceed to registration.

Do I have to use my trademark in order to file or maintain it? Can a trademark be cancelled due to lack of use?

Neither actual use nor intention to use are prerequisites for filing or renewing a trademark. On the other hand, use is a requirement for maintaining protection in the sense that if the proprietor has not put the trademark into genuine and proper use within 5 years from registration, or if such use has been suspended for an uninterrupted period of five years, then the mark is vulnerable to cancellation.

In this respect, we must stress that use “as a mark” and in the course of trade is required, therefore use in advertising or as a trade name or other distinguishing feature of the business will not suffice. Token use intended merely to maintain the rights conferred by registration does not qualify as genuine use either.

In view of the above, use of some intensity is undoubtedly required, although it is not possible to determine a priori and in abstracto a quantitative, de minimis threshold for genuine use. It is clear that one has to take into account all facts and circumstances of the
case in question (e.g. the nature, scope, frequency of the use, regularity and duration of the use, nature of goods/services) and the fundamental criterion is whether said circumstances in their totality, and in consideration of the usual practice in the relevant sector, indicate that the use of the trademark is aimed at obtaining a market share for the relevant goods or services, rather than merely maintaining the rights to the trademark.

Trademarks must be used exactly as filed and as accepted otherwise they are open to cancellation on the basis of improper use. Nevertheless, the use of a trademark in a form differing in features, which does not, however, alter the distinctive character of the mark as filed, is considered as proper use and prevents its cancellation. The question of what differences would be considered as altering the identity of a trademark, is a matter to be interpreted by Courts on a case-by-case basis.

A trademark must be used for all goods/services for which it has been registered. Use limited to a part of the registered goods and services may allow the partial cancellation of the trademark in respect of these unused items.

Use of the trademark by a licensee inures to the benefit of the owner, but only, according to the leading opinion, if the license agreement has been recorded with the Greek Trademark Office.

Are proceedings available to remove a mark that has become generic or one that was incorrectly registered?

Cancellation proceedings are available for removing from the Register a mark that has become a commonly used term, due to the activity or inactivity of the owner. This provision places the onus on the rights holder to take proactive steps in order to ensure that the trademark does not lose its distinctiveness due to non-proper, extensive use by others in the context that would render it a generic term.

Furthermore, the validity of any mark that should not have been registered in the first place (i.e. if it contravenes articles 3 or 4 of the Trademark Law) can be challenged through a cancellation action which must be submitted within 5 years starting from the registration of the trademark, unless the later mark was registered in bad faith. In the latter case, the action is not subject to prescription.

Are there any plans to reform the national Trademark Law?

A new draft bill on trademarks transposing Directive 2004/48 and taking into consideration Regulation 207/2009 was put to public consultation in May 2011 and is expected to be brought before the Parliament in the near future.

AD FINEM: Why should I register my trademarks?

As discussed earlier, although unregistered marks may enjoy a certain degree of protection under the realm of unfair competition law, registering a trademark is the only way through which you can be entitled to an exclusive right of use of said trademark, thus also enabling you to exploit it commercially – for example by issuing licenses for its use. Correspondingly, you can rely on a registered trademark in order to take legal action against infringers before the civil, administrative and criminal courts. Registered trademarks may also be filed in the Greek customs in order to prevent the importation of counterfeit and pirated goods and trigger the mechanism for their seizure and destruction. Finally, a registered trademark
is the ‘official’ route through which you can communicate a public notice of your claim of ownership in Greece and can act as the basis for obtaining registration in other countries.

LEGAL FRAMEWORK

The most important pieces of legislation governing trademarks in Greece are the following:

- the Trademark Law (2239/1994)
- the Unfair Competition Law (146/1914) as amended by Law 3784/2009;
- relevant EU legislation, inter alia the Community Trademark Regulation (40/94)
- Chapter C of Law 2943/2001, which establishes Greek Community trademark courts;
- Law 213/1975, which ratifies the Paris Convention for the Protection of Industrial Property;
- Law 2505/1997, which ratifies the Nice Agreement on the Classification of Goods and Services;
- Law 2290/1995, which ratifies the Agreement on Trade-Related Aspects of Intellectual Property Rights;
- Law 2783/2000, which ratifies the Madrid Protocol on the International Registration of Marks
What is a patent?
A patent is a legal title granting its holder the right for a certain period of time to prevent third parties from exploiting an invention for commercial purposes without authorization. In exchange the inventor accepts full disclosure of the invention through official publication.

Patent Authority
In Greece patents’ protection is awarded to the Industrial Property Organization (OBI).

Patentability
In order for a patent to be granted protection it has to be new, involve an inventive step and be susceptible of industrial application. An invention is “new” when it is not known to the public prior to its filing date; it involves an inventive step when it is not based on the existing state of the art; and it is subject to industrial application if it can be produced and used.

Application process
Granting a patent includes:
- Filing the application form to OBI.
- Four months delay, from the filing date, for any corrections to be made or omissions to be completed.
- Examination of the submitted documents in order to confirm whether the invention is “new” and involving an inventive step.
- Another three months delay, from the date of notification of the search report, for comments by the applicant to be submitted.
- Payment of the relevant fee.
- Grant of the patent.

Drafting of claims
The extent and content of the protection requested is based on the technical features of the invention as described in the invention claims. Claims are based on the description of the invention and might be accompanied by the relevant drawings. This stage is very important since all the interpretation and understanding of the invention is based on it. The patent application may contain more than one claim.
Rights of patent holder

A Patent confers on its owner the exclusive right to produce, use, sell, assign licenses and in general to exploit the invention in Greece for such time as it remains in effect. It is therefore a monopolistic right to exploit the invention. But the patent is more than that as it also confers to its owner:

- **Negative rights**
  In the sense that it does not give the owner permission to produce and use the new patented product for as long as it risks infringing someone else’s patent. It only gives the owner the legal right to stop others from copying or making use of the invention.

- **Commercial potential**
  The commercial potential of a patent takes many forms. Exclusivity is the most obvious one, since it allows the inventor to exploit the invention without direct competition. Like any other property it can be bought, sold or conceded. It therefore might have considerable value as tradable commodity.

- **The deterrent effect**
  The simple application for the grant of a patent may have a substantial impact on the market and influence competition. This is known as the deterrent effect.

Trading value

A patent has an inner value because of the exclusivity rights it confers to its owner. This value may vary depending on the originality of the invention. Similar products or processes in the market which are outside the scope of the given patent will certainly deteriorate its inner value. However the patent still has a substantial trading value through:

- Direct licensing.
- Cross licensing (grant someone a licensing in exchange of his own licensing).

Duration of protection

Patents are valid for 20 years to begin from the day following the patent application filing date.

How to Transfer a patent

All patents and patent applications being immaterial property goods are subject to transfer through a financial transaction (assignment, merger, takeover etc.) or as the result of an operation of law (inheritance process, bankruptcy etc.). In this way the inventors who usually are creative persons but not business oriented ones are able to sell their rights letting other people manage their industrial property assets.

Opposition /Appeal

After a patent has been granted, it may be opposed by third parties – usually the applicant’s competitors – if they believe that it should not have been granted. This could
be on the grounds that the invention lacks novelty or does not involve an inventive step. Decisions on opposition are open to appeal.

**How much will a patent cost**

The overall cost of obtaining a patent will vary according to the individual circumstances. There are official fees to be paid to the relevant authority as part of the application process and patent attorney’s fees which vary according to time spent and patent complexity.

**Modification of inventions**

At any time after the grant of the patent, the patent owner may request the revocation or the limitation of the patent. The decision to limit or to revoke the patent takes effect on the date on which it is published.

**Patent of addition**

A Patent of addition is a protection title granted for an invention which constitutes a modification to another already protected invention (main patent).

The Patent of addition follows the main patent and expires at the same time. It is granted solely to the owner of the main patent. The scope of the new invention must be in connection to at least one claim in the main patent.

The same criteria as for granting patents (new, inventive, industrially applicable) apply to the granting of a Patent of addition, however it is only valid from its filing date until the expiration of the main patent to which it relates. Should the main patent be invalidated by a Court decision or other process, the patent of addition may remain untouched provided (and for as long as) the fee for the main patent continues to be paid.

**Conversion of a Patent of addition**

A Patent of addition may be converted into a patent at any time provided an application is filed by its owner to this purpose. There is a priority right for this subsequent patent as from the original date of filing the Patent of addition.

**Utility models**

The Utility Model Certificate is a title of protection related to any “new” and “capable of industrial application three-dimensional object” with a predetermined shape and form, which provides a “solution to a technical problem”.

- The procedure for obtaining a Utility Model Certificate includes:
  1. Filing of the application.
  2. Four months delay for eventual corrections or omissions.

- Contrary to the patent the Utility Model Certificate is valid for only 7 years, provided the renewal fee is paid annually during the whole period of protection.

- The Utility Model Certificate may be granted for tools, implements, devices, vessels, components etc.
Converting a patent application into a UMC application

There are only two cases in which a patent application may be converted into a Utility Model Certificate application:

- In case the inventor himself demands (in writing) the conversion of his patent application into a UMC application. This conversion is only possible prior to the final patent grant.
- Automatically, in case the inventor forgets to pay the due patent search report fee. In both above cases the patent application date counts for the priority rights.

Industrial design

An industrial design is “the outward visible appearance of the whole or part of a product resulting from the specific features thereof, such as the lines, shape, color etc”. The owner of a design or model receives a Certificate of registration.

- Procedure:
  - There is a delay of 4 months from the date of the filing for the certificate to be issued. The duration of the certificate is of 25 years.
  - The industrial design or model has to be “new”, in the sense that there exists no identical design or model known to the public; and bear an “individual character”, in the sense of creating a unique impression on any informed user and this in relation to the other existing designs.

European patent

The EPC (European Patent Convention) has established a single European procedure for the grant of patents on the basis of a single application. A uniform body of substantive patent law designed to provide easier, cheaper and stronger protection for inventions in the contracting states has been created. In each contracting state for which it is granted, a European patent gives its owner the same rights as it would confer to a national patent granted in that state. If its subject-matter is a process, protection is extended to products directly obtained by that process. Any infringement of a European patent is dealt with by national law. The standard term of a European patent is twenty years as from the date of filing, provided that the annual renewal fees are duly paid.

PCT

Greece is also a signatory to the Paris Convention which governs International Patents protection. Actually the signatories of the Convention adopted the concept of priority rights to give the inventor enough time to prepare himself to protect his invention in more than one country. The beneficiary of a patent filed in any of the signatory States has a priority right towards all others to fill a demand for a patent for the same invention in any other signatory State. In this way, the inventor may obtain a series of patents which protect his invention in different eligible States.

- Conditions for having a priority right recognized
  - In order for an inventor to be granted an international priority right one must:
    1. file a patent application in a signatory State to the Convention.
2. file a patent application for the same invention in any other signatory State within a deadline of 12 months from the first filing date.
3. disclose the country and date of first filing (priority date) at the moment of filing the 2nd application.
4. The priority certificate should be filed (the original and any translation required etc.) within a deadline of 16 months from the priority date.

- Claiming priority in Greece

If a patent is filed regularly in any of the Paris Convention signatory States, then the owner has a 12 months priority right for filing the same patent in Greece. As above, when filing the patent he has to disclose the country and priority date of the 1st filing. He then has another 16 months from the priority date to submit the relevant documents, mainly a duly translated copy of the priority certificate issued by the competent authority of the country where the first filing was made.
What is the aim of the Greek Copyright Law?

Law 2121/1993 with all its subsequent modifications is the legislative instrument deployed for the protection of author's rights. Authors' rights are the equivalent of Copyright in civil law jurisdictions. Authors' rights (AR) provide a set of moral and economic rights both for providing the authors with economic incentives to create original works and for protecting the link between the author and her work. AR are a limited property right, both in the sense of its duration (the life of the author plus seventy years) and its nature (ideas and facts are not protected and the work has to be original).

What other rights does Law 2121/1993 cover?

Besides Authors' rights, Law 2121/1993 also covers Related Rights (RR) and the sui generis right of the database maker (sui generis right). Related Rights cover performances by natural persons that are externalised or communicated to the public and which relate to works protected by Law 2121/1993. The sui generis right is granted to the maker of a database to compensate her for the investment made in compiling a database irrespective of whether it is original or not.

What are the works protected by Copyright?

A work protected by the Copyright as defined in law 2121/1993 has to meet the following conditions:
(a) it has to be a creation of the intellect
(b) it has to be original
(c) it needs to be a creation expressed in words or a work of art or of science
(d) it needs to be expressed in a certain form

Are there any formalities required for granting protection under Copyright Law?

No formalities are required. Law 2121/1993 is in accordance to article 5(2) of the Berne convention. The work is protected at the moment of its creation without its completion to be a requirement of protection. Legal Deposit rules of art. 12 of Law 3149/2003 that govern the deposit of a copy of a book to the National Library do not constitute a condition for granting Copyright protection.

Are ideas and facts protected works according to Law 2121/1993?

No. Law 2121/1993 protects only the expression of an idea and not the idea itself. The idea/expression dichotomy is a key principle in the Greek Copyright law, though the precise boundaries between the two are difficult to pre-determine and need to be examined on a case by case basis. The ideas are considered as the “raw material” upon which creative works may be built and hence need to be outside the Copyright system of protection. On the same grounds, outside the Copyright system of protection are generic processes or methods of operation, mathematical concepts, simple facts and data, news, principles, numbers, art movements, architectural styles, forms, music styles, business and commercial ideas, games instructions as such, standard commands in software menus, mathematical algorithms etc.
What is the threshold of originality for the protection of works?

While Law 2121/1993 is influenced by French Authors’ Rights’ law that views the work as an emanation of the author’s personality, the jurisprudence follows the principle of “statistical uniqueness”. According to this theory a work is original if a third person under the same conditions and circumstances cannot produce the same work. The originality in the Greek Copyright system is a relative originality, i.e. it present individual characteristics in accordance to the statistical uniqueness theory or has a certain distance from the known and self evident. Specifically for computer programs, photographs and databases, the Greek law recognises a lower threshold of originality, following Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, i.e. that the work needs to be the author’s own intellectual creation. Greek jurisprudence accepts that there may be variable levels of originality depending on the character of the work as more creative or more functional or utilitarian.

What are the economic rights granted to an author under Law 2121/1993?

The list of economic rights granted to the authors is not an exhaustive one and includes the following rights:
(a) the right to record and make copies (transient or persistent) of the work in any medium and form, in part or in whole
(b) the right to translate the work
(c) the right to create derivative works or to make any changes or alterations to the original work
(d) the right to distribute the original or its copies to the public in any form through sales or in any other fashion.
(e) the public lending right
(f) the right to publicly perform the work
(g) the right to transmit or retransmit the work to the public by any means or process
(h) the right to make the work available to the public by any means or process
The economic rights are absolute and exclusive and may be exercised irrespectively of whether there is commercial gain from such activity or not. The rights may be licensed exclusively or non exclusively for specific duration or the whole duration protection of the work.

Can the author waive all her economic rights?

Yes, but not to license, assign or waive modes of exploitation not known at the time of the waiver. The author cannot waive or quit from all the rights in her feature works. The waiver of the economic rights does not equal to the waiver of the moral rights; however, the way in which moral rights are exercised has to be interpreted in accordance to the licensing, assignment or waiver of the economic rights by the author.

What is the duration of copyright?

- The general rule is that the term of protection is the life of the author plus seventy years.
- If the work is a collaborative work, then the duration is that of the life of the last surviving author plus seventy years.
- If the work is an audiovisual work, the term of protection is 70 years after the death of the last surviving from the main director, the script writer, the dialogue author and the original score composer.
- If the work is a compilation, then the duration is 70 years after the death of the principle editor. However, each of the distinct contributions is calculated separately in accordance to the general rules.
- If the work is a pseudonymous work, then the duration is 70 years from the date when the work was made first available to the public unless the identity of the author is revealed or made known, in which case the general rule of life plus 70 years applies.
What are the moral rights granted to an author under Law 2121/1993?
The list of moral rights in Law 2121/1993 is a non-exhaustive one. It includes the following rights:
- the right to decide the time, place and way in which the work will be communicated to the public
- the right to be attributed as the author of the work (paternity right) or the right to remain anonymous or the right to use a pseudonym
- the right object to any distortion or mutilation of the work including the presentation of the work in any way that prejudices the reputation of the author
- the right to access the work irrespective of the ownership over the material carrier of the work
- the right to rescind a contract transferring the economic right or an exploitation contract or license of which his work is the object, subject to payment of material damages to the other contracting party, for the pecuniary loss he has sustained
- Droit de Suite: the right to demand a share of 5 percent of the selling price whenever an original work of fine art is resold at a public auction or by an art dealer.

What is the duration of the moral right?
Both moral and economic rights last for the life of the author plus seventy years, however, specifically the right of attribution (paternity) and integrity are perpetual.

Can moral rights be waived?
No, but it may be exercised through consent.

Can moral rights be licensed or transferred?
Only after the death of the author, the right is transferred to their heirs and has to be exercised in accordance to her will, if this has been explicitly expressed.

What are the limitations on the economic rights?
The limitations only apply on the economic rights and allow users of the works to perform acts otherwise prohibited without asking permission from the author or rights holder. These are:
- reproduction for private use
- quotation of extracts
- use in School Textbooks and anthologies
- reproduction for teaching purposes
- reproduction by libraries and archives
- reproduction of cinematographic works (National Cinematographic Archive)
- reproduction for Judicial or Administrative Purposes
- reproduction for Information purposes
- use of images of works sited in public places
- public performance or Presentation on Special Occasions
- Exhibition and Reproduction of Fine Art Works
- Reproduction for the Benefit of Blinds and Deaf-Mute
- temporary acts of reproduction
The limitations provided above shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other protected subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

What are the rights owners granted related rights?
- Performers
- Producers of Sound and Visual Recordings
- Radio or Television Organisations
What are the economic rights granted to a rights owner of related rights?

The list of rights granted to rights owners of related rights is non-exhaustive and includes the following rights per category of rights owners:

(a) Performers have the right to authorise or prohibit:
- the fixation of their performance
- the direct or indirect, temporary or permanent reproduction of their performance
- the distribution to the public of the fixation of their performance
- the rental and public renting of the fixation of their performance
- the radio and television broadcasting of the illegal fixation by any means
- the radio and television broadcasting of their live performance
- the communication to the public of their live performance made by any means other than radio or television transmission
- the making available to the public of fixations of their performances in such a way that members of the public may access them from a place and at a time individually chosen by them.
- the right to remuneration for each of the acts listed above, including an unwaivable right to equitable remuneration for rental, if he has authorized a producer of sound or visual, or audiovisual recordings, to rent out recordings carrying fixations of his performance.

(b) Producers of Sound, Visual and Audiovisual Recordings have the right to authorise or prohibit:
- the reproduction of their phonograms
- the distribution of the above by any means
- the rental and public lending of the above
- the making available to the public by any means of the above
- the broadcasting by any means
- the import of the above recording without their consent from a country outside the European Community when the right over such import in Greece had been retained by the producer through contract
- the right of equitable remuneration

(c) Radio and Television Organisations have the right to authorise or prohibit:
- transmission of broadcasts by any means
- communication of their broadcasts to the public in places accessible to the public against payment of an entrance fee
- the fixation of their broadcasts on sound or sound and visual recordings
- the reproduction of the fixation of their broadcasts
- the distribution to the public of the recordings containing the fixation of their broadcasts
- the rental or public lending concerning the recordings containing the fixation of their broadcasts.
- the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them concerning the fixation of their broadcasts.

(d) Publishers have the right to authorise or prohibit:
- the reproduction by reprographic, electronic or any other means of the typesetting and pagination format of the works published by them, if the said reproduction is made for exploitation purposes.

(e) Persons publishing previously unpublished works have:
- the equivalent of the economic right of the author
Are there any moral rights granted to owners of related rights?
Performers have during their lifetime
- the right to full acknowledgment and credit of their status as such in relation to their performances and
- to the right to prohibit any form of alteration of their performances.

What is the duration of the performers’ moral rights?
The duration of their life, after which it passes to their heirs and lasts until their death.

What is the duration of related rights?
- For performers it is 50 years after the date of the performance, but cannot be less that the life of the performer
- For producers of audio works: 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public.
- For the producers of audiovisual works: 50 years after the fixation is made. However, if lawful publication or lawful communication of the device is made to the public within such period, such rights shall expire 50 years from the date of first publication or first communication to the public, whichever comes first.
- For broadcasting organisations 50 years after the date of the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite or any other means of transmission.
- For persons having published a previously unpublished work the duration is 50 years after the last edition of the work.

What are the limitations on related rights?
The limitations applicable to the economic right attaching to copyright apply mutatis mutandis to related rights.

Who is granted the sui generis database right?
The sui generis right is granted to the person which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents. The maker of a database is the individual or legal entity who takes the initiative and bears the risk of investment. The database contractor is not considered as maker.

What are the rights granted to the maker of a database?
The maker of the database has the right to prevent extraction and/or re-utilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database. Also The lawful user of a database made available to the public by any means cannot:
- a) perform acts that are opposed to the normal exploitation of such database or unjustifiably prejudice the lawful interests of the maker thereof;
- b) cause damage to the beneficiaries of the copyright or related rights for works or performances contained in the said database.

Are there any limitations to the sui generis database right?
The lawful user of a database made available to the public by any means may, without the permission of the maker of the database, extract and/or re-utilise a material part of its content:
a) when the extraction is made for educational or research purposes, provided that the source is quoted, and to the extent that it is justified by the non commercial purpose pursued,
b) when the extraction and/or re-utilisation is made for reasons of public safety or for purposes of administrative or judicial procedure.

What is the duration of the sui generis database right?
The sui generis right expires 15 years from the 1st of January of the year following the data of the database completion, unless any substantial change is made. In the case of any such substantial change, evaluated qualitatively and/or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively and/or quantitatively, shall qualify the database resulting from that investment for its own term of protection.

Can authors collectively manage their rights?
Authors may assign the administration and/or protection of their rights to a collecting society established exclusively to engage in the functions of administering and protecting all or part of the economic rights. Likewise, collecting societies may perform those functions for a person to whom the author has granted a right as a gift, for a general proxy, for an heir or for a foundation set up by an author. A collecting society may have any form of company status. Where a collecting society is registered as an incorporated company all of its shares shall be nominal.
The legal framework in Greece is particularly favourable for conducting shipping business and this, together with other factors, has contributed to the worldwide development of Greek Shipping.

What are the main shipping activities in Greece?
The main shipping activities in Greece primarily include the following:

- Primary activities: (i) Ship owning, (ii) Ship management, (iii) Chartering; and
- Supporting services: (i) Brokering activities (S&P, Chartering), (ii) Marine Suppliers, (iii) Technical Experts, (iv) Ship-buildings/repairs, (v) Legal Services and (vi) Banking Services

What are the types of shipowning Companies?
The major types of companies that may own vessels can be broadly divided into three categories:

**Ordinary Greek commercial companies:**
(i) Company limited by shares (SA - Corporation) - Anonimi Eteria or AE (codified law 2190/1920) mainly used for coastal shipping lines; (ii) Limited Liability Company (Ltd) - Eteria Periorismenis Efthinis or EPE (law 3190/1955) used occasionally for smaller ships; (iii) (General) Partnership - Omorithmi Eteria or OE and Limited Partnership - Eterorithmi Eteria or EE (Greek Civil and Commercial Codes) both of which are very rarely used in shipping;

**Greek companies specifically designed for shipping activities:**
(i) Greek Maritime Company - Naftiki Eteria or NE (law 959/1979), designed for all types of ships, though not frequently used;
(ii) Special Maritime Enterprise - Eidiki Naftiki Epichirisi or ENE (art.16 of the Ministerial Decisions approving the registration of a vessel under art.13 of legislative decree 2687/1953 and law 959/1979 as amended by law 2987/2002) used for oceangoing vessels;
(iii) Shipping Company for Pleasure Yachts - Naftiki Eteria Plion Anapsihis or NEP A- (law 3182/2003) used for professional pleasure yachts;
(iv) Investment Company in Oceangoing Vessels - Eteria Ependiseon stin Pontoporo Naftilia or EEPN (law 2823/2000), a type of holding company designed mainly for listing its shares on the Athens Stock Exchange;
(v) Partnership for co-ownership of vessels - Simplioktisia (art.10 of the Code of Private Maritime Law), occasionally used for small local vessels; and

**Foreign companies,** which are extensively used for oceangoing vessels flying the Greek flag or a foreign flag, are mainly incorporated in Liberia, the Marshall Islands, Panama, Malta, Cyprus and the British Virgin Islands.

Which are the types of Companies most commonly used in practice for ownership of vessels?

- **Company limited by shares (SA)** - Anonimi Eteria (AE): commonly used for coastal shipping and the requirements of its incorporation are set out in law 2190/1920.
- **Greek Maritime Company (GMC)** - Naftiki Eteria or NE: Incorporation requires a private deed signed by at least two incorporators, which is registered with the Registry of Maritime Companies. By law a GMC has a very specific purpose, i.e. the ownership of vessels under Greek
flag and/or the operation and management of Greek or foreign flag trading vessels (excluding touristic yachts) as well as the acquisition of shares of other Greek Maritime Companies. The minimum share capital required is Euro 5,000 or its equivalent in another currency. In principle, non EU or EEA Member State nationals may become shareholders or acquire rights in rem in the shares of a GMC for less than 50%. The board should consist of at least three directors, holding a term of office of three years (which is renewable).

**Foreign Companies.** Such companies may be incorporated easily and swiftly through their local consuls or company registry directly from Greece, and are widely used in practice.

### Which is the main type of Ship Management and Ship Broking Company?

The typical ship management company in Greece is a foreign company (usually incorporated in Liberia or the Marshall Islands) which establishes a branch office in Greece according to art.25 of law 27/1975 as amended (formerly law 89/1967, hence the commonly used term “law 89 Company”). Law 89 Company is possibly one of the most attractive corporate vehicles universally for shipping business mainly because of the straightforward method of establishment, the tax benefits and the stable legal environment under which it operates.

The main features of a law 89 Company are as follows:

#### a) the established branch or office may engage exclusively in:

- the management, operation, chartering, average adjusting, brokerage (of sale and purchase/ shipbuilding/ chartering/ insurance) of vessels under Greek or foreign flag of registered tonnage over 500 tons (but excluding passenger and commercial vessels servicing domestic coastal lines or performing voyages within Greece);
- the representation of shipowning companies or other enterprises with the same purposes as the above; and
- the ownership or management of salvage-ships or tugs under foreign flag of any tonnage.

#### b) the permit for establishment is granted by a (joint) Ministerial Decision and is valid for 5 years (which is automatically renewed).

#### c) An application for the permit must be submitted together with the a number of supporting documents, including the company’s constitutional documents, a recent goodstanding certificate, an appropriate resolution of its board of directors, documentation relating to the appointment of a “legal representative” (who could be a Greek or foreign national with special residence permit in Greece) and public filing dues of Euro equivalent to US$ 2,000 which has to be imported in Greece in the name of the company, etc. The permit is usually issued within one month from the filing of the application.

#### d) Within two (2) months from the publication of the ministerial decision approving the establishment, the company must deposit a bank guarantee of US$ 10,000 with the Ministry of Finance.

#### e) The Company must import annually foreign exchange to cover all its payments in Greece of not less than US$ 50,000 and in all other respects, its income/profit is not subject to any income tax.

### What is the typical legal structure of a shipping business?

With the exception of the domestic coastal line shipping companies where all the vessels are usually owned by one company and/or by subsidiaries, the typical form of a shipping group consists of single-vessel shipowning companies managed -almost invariably- by a law 89 Company. This setup provides insulation/ protection of the shareholders and the other (sister) single-vessel shipowning companies from liability arising out of the operations of a particular vessel.

The aforementioned structure, enhanced by a parent holding company which wholly owns the single-vessel shipowning subsidiaries, is also used in case of raising equity through organised stock exchanges (most often in the US) whereby the parent holding company is the registered issuer of securities.
How is the Registration of Ships effectuated in Greece?

Vessels may be registered in Greece both under Greek flag through the Greek ship registries as well as under foreign flag through local consulate and maritime administration authorities.

a) **Registration under Greek Flag** may be effected in two ways:
   - registration pursuant to the Code of Public Maritime Law: all coastal shipping vessels (unlike oceangoing vessels) are registered through this method; and
   - registration of a vessel as a foreign investment, pursuant to art.13 of legislative degree 2687/1953, a method most commonly used for oceangoing vessels.

b) **General information on legislative decree 2687/1953.** Historically, legislative decree 2687/1953 aimed at the protection of foreign investment in Greece and has constitutional force i.e. supersedes ordinary legislation, cannot be repealed or amended by ordinary parliamentary act and, therefore, offers a secure legal framework throughout the vessel's registration and operation under the Greek flag. As a general rule, to effectuate an art.13 registration, more than 50% of the vessel must be beneficially owned by Greek interests. Pursuant to art.13 an approval order is issued (Ministerial Decision) which sets out the terms for the registration of a vessel. Only vessels of more than 1500 gross register tonnage bought by freely available foreign currency may be registered under this decree. Greece does not have an international registry (like Germany, or Scandinavian countries), however, art.13 registration practically serves the same purposes. The Ministerial Decision provides *inter alia* for the establishment of a special type of company under a flexible regime which is the shipowning company (ENE - see above). Other characteristics of art.13 Ministerial Decisions include the special crew manning requirements, reduced tonnage taxation, as well as automatic deletion of the vessel from the Greek registry (and flag) following the filing of a bank guarantee to the registrar.

c) **The documents required**, along with the application by a prospective shipowner for issuance of the Ministerial Decision, are: (i)a certificate from the Greek Shipowners' Union confirming that the legal entity applying for registration is owned by Greek interests in a percentage over 50%; (ii)declaration of appointment of a guarantor (individual or a law 89 Company) who will be liable to the Greek authorities for the payment of the vessel's debts and a matching declaration of acceptance by the guarantor; (iii)declaration under law 1599/1986 of the guarantor confirming that the capital of the shipowner belongs to Greek interests by more than 50%, also providing the names and other personal details of the directors of the shipowning company; (iv)resolutions of board of directors of the shipowning company approving the registration, appointing a guarantor and appointing attorneys; (v) certified copies of the constitutional documents; (vi)recent goodstanding certificate of the shipowning company issued by the appropriate Authority; (vii)receipt of Greek Chamber of Shipping relating to the payment of specified fees; (viii)copies of the international certificate of measurement and certificate of nationality issued under the previous flag of the vessel, or in case of a newbuilding, the interim certificate of measurement issued by the classification society and copies of the relevant pages of the shipbuilding contract relating to the particulars of the parties, purchase price etc.; and (ix) application for obtaining the international call sign and MMSI and the safe manning certificate. The permit is published in due course at the government gazette, however, a shipowning company may avail itself of the benefits of art.13 as of the registration of the vessel.

d) **Documents to be filed with the shipping registrar prior to the actual registration** (for pre-clearance):
   - fax confirmation from the Ministry responsible for maritime affairs advising the number of the Ministerial Decision;
   - in relation to vessels which have been registered under the flag of a third country (i.e. a non EU country), application for the issuance of the relevant certificate addressed to the Customs Authorities;
- copies of the international certificate of measurement and certificate of nationality of the vessel's present registry, proving that the sellers are the registered owners of the vessel;
- declaration under law 1599/1986 of the shipowning company confirming: (a) that the vessel is beneficially owned by Greek nationals by more than 50%; (b) that the vessel has not been registered with any other Greek registry and has not obtained provisional shipping documents; (c) the appointment of a process agent ("antiklitos"), i.e. a person residing at the place of the ships' registry responsible for accepting service of documents from the authorities and (d) that there has been no alteration to the vessel's particulars which appear in the aforementioned vessel certificates;
- declaration under law 1599/1986 of the process agent accepting their appointment and confirming that they cannot be released prior to their replacement;
- declaration under law 1599/1986 of the shipowning company that new safety and load line certificates will be issued; and
- customs clearance certificate.

e) Documents to be filed with the ship's registrar at the time of registration (i.e. simultaneously with the delivery of the bill of sale by the sellers):
- The relevant bill of sale duly executed by sellers (and, if required by the law of vessel's previous flag, also accepted by the buyer);
- The resolutions and power of attorney of the sellers and the buyers;
- Certificate of goodstanding of the buyers and the sellers.

f) Vessels under foreign flags may be registered from Greece through local or correspondent offices (consulates and maritime administration authorities) subject to the respective requirements of each jurisdiction. Typically the flags of Malta, Liberia, Marshall Islands, Panama, Bahamas and Cyprus are preferred.

What are the shipowning company’s Social Contributions for seamen for a Greek flag vessel?
Social insurance of Greek seamen includes mainly pension insurance offered by the Seamen's Pension Fund (NA T) and health insurance offered through Oikos Naftou (ON). The contributions are calculated as percentages of their monthly salaries (9% paid by the seamen and 14% paid by the shipowner). Certain additional contributions increase the seamen's percentage by about 4% and the shipowner's percentage by about 2%.

What is the current status on transportation of passengers - Cabotage (article 165 of Code of Public Maritime Law)?
Cabotage was the regime restricting local (i.e. within Greek territorial waters) transportation of passengers and goods only to vessels flying the Greek flag. Cabotage has already been abolished for vessels flying the flag of an EU Member-State. A more relaxed regime has been recently established by law 3872/2010 for vessels flying a flag of a third (non-EU) State, and further liberalization is expected.

How are Vessels acquired?
In the ordinary course of business, a special purpose vehicle (SPV) usually a foreign company (incorporated in the Marshall Islands, Liberia, Malta, Cyprus, Panama, etc.) may acquire a vessel by two methods:
- either from a ship builder (typically located in Korea, China or Japan) pursuant to a shipbuilding contract under the terms of which the purchase price is payable in 4 to 5 pre-delivery instalments, usually secured by refund guarantees and a final instalment payable on delivery (newbuilding acquisition);
- or from another shipping company (seller) typically through a standard Memorandum of Agreement (MOA) under the Norwegian Sale Form 1993-"NSF" and a bill of sale (second-hand acquisition).
How are vessels financed?
Shipping is a capital intensive industry and Greek interest shipowning companies almost without exception require financing to fund their activities. The dominant form of ship finance of Greek interest shipowning companies (typically SPVs) is debt finance and in particular a combination of asset and project finance. In the past decade several shipowning companies of Greek interests were able to raise equity by registering their securities on major international securities exchanges (such as NYSE, NASDAQ, London Stock Exchange main or alternative investment market). In view of the global credit crunch a series of other finance structures have been deployed by shipping companies of Greek interests to finance their activities (including high yield bonds, private equity, mezzanine finance).

What is the typical structure of a term-loan ship finance transaction?
The most common form of ship finance is a secured bilateral or syndicated loan (in the form of a short or medium term loan, revolving credit facility or less often an overdraft) provided by Greek and/or international financial institutions for the financing or refinancing of:
(a) the construction of one or more new vessels; or
(b) the acquisition of one or more second-hand vessels.
In case of refinancing it is now common to encounter mezzanine finance (usually high yield junior debt) provided typically by international private equity firms or hedge funds.

What is the typical documentary structure in a secured term-loan ship finance transaction?
The documentation used is, in broad terms, the same used in ship financing internationally and includes the loan agreement and the security documents: a mortgage on the vessel(s), general and specific assignment of earnings, assignment of insurances, bank account pledges, (occasionally) share pledges, guarantees by the holding and/or managing companies and/or all or certain individual shareholders-ultimate beneficial owners. Personal guarantees granted by Greek natural persons warrant careful consideration in order to be enforceable under Greek law and Greek mortgages as to their formal requirements in order to be valid. Currency and/or interest hedging arrangements have become usual practice in ship financing.
In case of new buildings and for the stage of the construction, usual pre-delivery security includes the assignment of the borrower’s rights under the shipbuilding contract, the refund guarantees, the insurance and any other benefit the borrower (prospective shipowner) may have from the builder.

What are the types of a Greek Maritime Mortgage?
There are two types of ship mortgage: (a) the mortgage pursuant to articles 195-204 of the Code of Private Maritime Law - law 3816/1958, and (b) the preferred mortgage which is granted pursuant to law 3899/1958 on vessels over 500 tons.
In both cases, the mortgage is granted for a specific amount by notarial deed and is registered with the ships’ registry; it constitutes a title giving the mortgagee a right in rem running in priority over any unsecured claims and constitutes an enforceable title. A preferred mortgage granted over a vessel registered under art.13 of legislative decree 2687/1953 gives the mortgagee the right in rem running in priority over the maritime liens of article 205 of the Greek Code of Private Maritime Law with the exception of the maritime liens which are also provided in article 2 of the Brussels Convention of 1926. A mortgagee may liquidate the mortgaged asset (i.e. the vessel) in a private sale or public auction and, in case of a preferred mortgage, the mortgagee has the right to assume the management of the vessel.

What is the taxation regime for Greek shipping?
A significant attraction for doing shipping business in Greece is the taxation regime. Greek flag vessels pay a fixed tonnage tax (depending on the tonnage of the ship) without the need to have dealings with local tax authorities regarding their annual income (law 27/1975). Once this tax is paid, no further (income) tax is paid for the profits arising out of the operation of a vessel or capital
gains in case of sale of the ship, either by the shipowning company or its shareholders up to the level of individual (natural person) shareholders. This regime is constitutionally protected (art.107 of the Constitution) i.e. it cannot be altered even by act of the Parliament. Transactions relating to a vessel registered under art.13 such as registration, sale and purchase, mortgage, deletion etc. are free from any tax, charge or dues (save for a small fixed due). A similar (but not constitutionally protected) regime applies for foreign flag vessels managed by a law 89 Company. Furthermore, Greek flag vessels owned by Greek legal entities that make calls on U.S. Ports are also exempt from U.S. income tax pursuant to a bilateral treaty between Greece and the U.S.

What are in brief the basic elements of the legal framework of Greek Shipping?

In a nutshell, the basic components of the legal regime for shipping, which make it an attractive business to be carried out from Greece and has contributed to the worldwide success of Greek Shipping are:

- Stable and certain business legal environment secured by the Ministerial Decision for the registration of oceangoing ships under the art.13 of legislative decree 2687/1953 which enjoys constitutional protection;
- Definite and straightforward tax regime set by law 27/1975 constitutionally protected for Greek flag vessels; and
- The Law 89 Company pursuant to law 89/1967 (already replaced by art.25 of law 27/1975) which sets the platform for one of the most successful legal structures in the shipping industry.
Overview
The Greek legal system provides basically for two types of seizure of the assets of a debtor, serving two different purposes, i.e. the provisional seizure, aiming to secure/safeguard a claim (saisie-conservatoire) and the executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution).

Applicable Laws
Applicable International Convention to the arrest of ships in Greece.
As regards vessels, Greece has ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships (10.05.1952) which was implemented in Greece by Legislative Decree 4570/1966 (the “Convention”).
- a. provisional seizure, aiming to secure/safeguard a claim (saisie-conservatoire)
- b. executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution)

Provisional seizure (saisie-conservatoire)
The Petitioner(s): Any party alleging to have a claim against the owners of a specific vessel may apply for her arrest as Petitioner.
The Respondent(s): The registered owner (please see par 6)
The Petition: The petition in order to be complete should comprise the following elements:
- Full identity of the Petitioner
- Full identity of the Respondent
- Description of the Vessel
- Factual allegations and supporting documentation on the claim
- A request for the vessel’s arrest for a specific amount should be set out into the Petition (mainly the amount of the claim plus 30% thereof for future interest and costs)
- Interim Restraining Order: It is a standard practice that the Petition also contains a request for an Interim Order for the temporary prohibition of the vessel’s sailing
If the ship under arrest is flying the Greek flag the Interim Order not only prohibits the vessel’s sailing but also prohibits any change to her legal status.

Hearing of the Interim Restraining Order
Once the petition is filed with the Court, the Respondents or their local representatives are notified by phone or telegram by the administrative personnel of the Court. The
hearing may be fixed same day or next day. The Judge on duty hears the Arrest Petition and both parties (if present). Should the criteria described in par. “arrest procedure” are reunited an Interim order is granted.

Validity of the Interim Restraining Order
The Interim Restraining Order is valid until the hearing date and subject to extension, on Petitioner’s request, until the issuance of the judgment on the arrest Petition.

Hearing of the Petition: The Petition will be heard at a date which will be set by the Court upon its filing(15-30 days later). Care of Petitioners, the Respondents should be notified accordingly and summoned to appear at the hearing. The hearing is conducted orally and the parties may file Submissions along with supporting documents, translated into Greek and examine witnesses.

Judgment: On conclusion of the hearing, the Court in principle would reserve its judgment which will be normally issued in the next two weeks. The vessel may remain temporarily arrested by virtue of the Interim Order (if this was granted at the time and the court has extended its validity further to the demand of the petitioner).

Enforcement: An Interim Order or an arrest Judgment become effective as from their notification, by way of service of an official copy thereof upon Respondents as well as upon the competent Port Authorities for entry into the appropriate Books kept by them. The main effect of the enforcement is the prevention of the vessel’s sailing. Furthermore and to the extent Greek law would apply, any disposal of the arrested vessel is forbidden and if effected in breach of such prohibition, will be nul and void towards the arrestor and for the amount for which the arrest was ordered; disposal is likewise nul and void towards third parties as well, if effected after the entry of the arrest Order or Judgment into the Arrest Book of the Port of the ship’s Registry.

Provisional Validity: An arrest effected as aforestated is provisionally valid i.e. until a final judgment on the merits is issued against the arrestor or a like judgment, issued in the arrestor’s favor, has been enforced.

Alternatives
A. Under the Private Maritime Law Code
   I. The transfer of ownership in lieu of security (fiduciary transfer of ownership).
   II. Hypothecation of the ship.
B. The Ship Mortgage (preferred Mortgage under Legal Decree 3899/1958
C. The Preferred Mortgage under the Legal Decree 2687/1953.

Claims subject to ship arrest

1. For which types of claims can you arrest a ship?
   Arrest can be sought for claims of any type and nature, be it conditional or subject to time terms, but where the Convention applies, an arrest cannot be ordered for claims other than maritime as defined in Art. 1.1 of the Convention

2. Can you arrest a ship irrespectively of her flag?
   Arrest of ships is subject to the regime of the Convention where the latter is applicable i.e. to vessels flying the flag of another contracting State calling at a Greek port and for
maritime claims only as the latter are defined by the Convention, otherwise, the general provisions of domestic law shall apply.- In both cases the procedure to follow is identical. As regards Greek flag vessels their arrest can be sought and ordered even if they are not physically present within the jurisdiction of the Court with which the Petition is filed. The respective arrest judgment, being served as aforementioned, will cause the legal prohibition of any disposal of the vessel; the vessel's physical arrest may be then effected at any time within the jurisdiction of any Greek Court by virtue of the same judgment. Furthermore and insofar as Greek law is applicable, in case the ownership of the vessel has been transferred by the original debtor, arrest of the same vessel may be sought and possibly ordered against her new owner.

3. Can you arrest a ship irrespectively of the debtor?
   Actions in rem against the vessel only are not provided for by Greek law. Therefore, the Petition should be filed anyway against her registered owners, even in case the main liability for the claim lies on third parties such as the vessel's operators and possibly other parties having control over the vessel.

4. What is the position as regards sister ships and ships in associated ownership? Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?
   Under Greek law two ships are regarded as sister-ships if owned by the same person (or body corporate) and sister-ship arrests may be effected in Greece in limited circumstances.
   It has been held by the Greek courts that the corporate veil may be pierced to reveal the beneficial ownership only where there exists an in concreto reason for doing so. In lifting the corporate veil, the Greek courts have traditionally considered two criteria.
   A. The criterion of “the effective control” (of the company)
   B. The criterion of the “use of intermediary persons” in respect of shareholding or management.

Arrest Procedure
   One-member district courts enjoy general subject matter competence for provisional remedies. An arrest may be ordered by Court judgment only, issued following summary proceedings initiated by the filing of the Claimants’ Petition. In circumstances of urgency, ex parte proceedings may be conducted should the requested measures seek to secure a substantive right and the indebtedness of the debtor is ostensible.
   The sole oral hearing is based on a flexible procedural framework. This refers to both the authority of the judge for relying on facts not submitted by the parties and the free admissibility of any available means of proof. Evidence must be brought during this hearing.
   The decision to issue a provisional remedy, or to reject an application, is a judicial decision and may not be attacked by any methods of review.
   According to Article 692/4 of the Code of Civil Procedure, provisional remedies must not lead to the full satisfaction of the substantive right which they seek to secure or preserve. An arrest judgment may be given provided that Petitioners would be able to show to the satisfaction of the Court, a prima facie founded and valid claim against the vessels’ owners and the occurrence of a situation of urgency or of imminent danger justifying the necessity for granting the requested arrest.
Attorneys are presumed to have the authority to act therefore the presentation of a Power of Attorney is not needed, unless this authority is challenged by the adverse party.

**Release from Arrest**

Release would be obtained at any time provided that Respondents have deposited with the Court a guarantee of a First Class Bank in Greece in favour of the arresting party and for such amount as fixed by the Court. Guarantee in any other form such as P&I letters of undertaking is not accepted; however if the parties agreed to such other form they may cause the vessel's release following the procedure for the vacation of the arrest judgment. Vacation of the arrest judgment by virtue of a Court Order would entail the release from the arrest. Such vacation is mandatory when a final judgment on the merits has been issued against the arrestor or a like judgment, issued in the arrestor's favour, has been enforced. Vacation will be likewise ordered if an agreement for the settlement of the claim has been reached, as well as when 30 days from the termination of the proceedings on the merit when a change in the circumstances, justifying such vacation, has intervened.

5. **Do your Courts require counter-security in order to arrest a ship?**

   The Court has the power to order Petitioners to provide counter security by way of Bank guarantee; however in practice such counter security is rarely ordered, although frequently demanded by Respondents.

6. **Arresting a ship for a maritime claim and a maritime lien**

   Greece did not ratify the 1926 Convention. The Greek Code of Private Maritime Law however (Arts.205-209) has been influenced up to a point by that convention. Further, the administrative acts by which ships are capitals as foreign registered (those ships form the bulk of the Greek merchant fleet) stated that the maritime liens, included in Art.205 para. 1 of the Code of Private Maritime Law take priority over a preferred maritime mortgage. The Supreme Court of Greece (Areios Pagos) in its decisions (913/1975,229/1983 (plenary) and 1055/1983) held that Art.2 of the 1926 Convention cited by the acts above was to be dealt with as a fact. Thus, the party to the proceedings asserting such a maritime lien had also to prove the existence and the content of the maritime liens which took priority over a preferred mortgage.

7. **What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?**

   Upon receipt of instructions we may act all over Greece (through our network of associated offices) within the same day.
   Court and related costs are in the region of Euro 250-300 including Bailiff’s charges for the required notifications.
   The respective lawyer’s charges depend much on the urgency factor, the complexity of the issues involved, the work done and the time spent in initiating and conducting the arrest proceedings.

8. **Do you need to provide a POA, or any other documents of the claim to the Court?**

   Attorneys are presumed to have the authority to act therefore the presentation of a Power of Attorney is not needed, unless this authority is challenged by the adverse party.
9. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Submissions along with supporting documents, translated into Greek and comments on the witnesses' depositions are filed within 3 working days from the hearing. Supporting documentation needs to be notarized and apostilled, although simple copies may be used during the interim restraining order.

10. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Jurisdiction of a Greek Court to decide on the subject merits is not created by the arrest itself. However and unless otherwise provided for by international conventions ratified by Greece, the presence of a vessel within the jurisdiction of a Greek Court, not competent in principle to decide on the merits, would create jurisdiction of this Court to so decide (forum rei sitae), for as long as the vessel is still within its jurisdiction. The jurisdiction so founded may, however, be affected by certain jurisdiction clauses or arbitration agreements.

**Enforcement of Foreign Judgments**

Article 905 of the Code of Civil Procedure provides for the enforcement of foreign judgments in Greece. Under Article 905, a civil judgment issued by a foreign court may be enforced in Greece if it has previously been declared executable by a decision of a proper Greek court.

Article 906 of the Code of Civil Procedure provides that foreign arbitration awards may be enforced in Greece if provisions of Article 903 of the Code are met.

**Miscellaneous**

11. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Unless an action on the merits of the claim has been already brought, the arresting party should bring such action in the competent Court within such time as ordered by the Court, otherwise within 30 days from the service of the arrest judgment on Respondents, failing which the arrest is lifted ipso jure.

12. Do the Courts of your country acknowledge wrongful arrest?

Following substantive proceedings against an arresting party, the latter may be held liable for damages resulting from an arrest or a guarantee lodged, only if Claimants would be able to prove to the satisfaction of the Court that the arresting party knew, or by gross negligence ignored, that its claim secured as above, did not exist. Furthermore such liability is conditional to a final and irrevocable judgment whereby the action of the arresting party on the merits of its claim is dismissed for it being unfounded. - In view of such requirements it is not an easy task for Claimants to succeed in his action for damages caused by a wrongful arrest.

13. Public auction Procedure. Is it possible to have a ship sold pendente lite?

Under Greek law, the vessel remains in the custody of the ship-owner or the person who, at the time of the arrest, may be in possession of the ship. It is possible however, upon application to the Court for the arrestor to become the custodian of the ship in which case this party would have to bear the respective costs which are quite substantial.
The disposal of the arrested ship may only be effected after an irrevocable judgment has been issued in the main action (which may run in parallel with or follow the arrest proceedings) on the merits of the case. Such disposal may only take place in a public auction conducted by a Notary. The “Forced Auction Procedure”.

This procedure is governed by specific provisions contained in the Civil Procedure Code. A Notary who is specifically appointed by virtue of a Court order executes the forced sale. The sale has the form of an open public auction whereby the interested parties may submit their bids on the basis of a schedule prepared by a Court bailiff. No judicial sale can take place within the context of a ship arrest procedure, as the latter may only serve as a means of preservation, not a means of satisfaction, of a claim.

There are cases however when, in the context of arrest proceedings, the property arrested may be subject to deterioration and at the same time the cost for preserving it, is disproportionately high having regard to the level of claim. In such instances the Court, may, after a summary hearing, order its disposal. The auction proceeds shall consequently substitute the arrested property and shall be deposited with the Loans & Deposits Fund, pending the issue of an irrevocable judgment on the merits of the claim.

In shipping disputes, such a procedure may be encountered in cases where perishable cargoes have been arrested and the cost of preserving same until the issue of an irrevocable judgment is excessive. However it should be noted that such sale orders are granted in these very limited circumstances.
Which are the main sources of Greek Maritime Labor Law?

- Code of Private Maritime Law (Law 3816/1958)
- Code of Public Maritime Law, ratified by Legislative Decree 187/1973. Both enactments have been repeatedly modified, supplemented, amended by laws, decrees and ministerial decisions.
- General Greek Labor Law and Civil Law including the general provisions on contracts, the provisions on labor contracts (Civil Code art. 648-680).
- Social security law.
- Laws/decrees providing for work organization and conditions, safety issues.
- International regulation of maritime labor constitutes a major part of the Greek maritime labor law. Greece is a Member State of the International Labor Organization (ILO) and the International Maritime Organization (IMO) and has adopted and/or ratified the bulk of the international maritime Conventions, Resolutions and regulations. In accordance with article 28 of the Greek Constitution, international Conventions duly ratified by the Parliament form part of the internal law and supersede and prevail over national provisions. Greece has also ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR) which recognizes the right to individual petition of the seafarer.

Who falls under Greek Maritime Labor Law?

a. Greek seafarers serving onboard Greek flagged ships.

b. Foreign seamen serving onboard Greek flagged ships. According to art. 83 of the Code of Private Maritime Law, the Collective Labor Agreements that apply to Greek seafarers who serve onboard Greek flagged ships cover and apply equally to foreign crewmembers. The Greek Constitution (art. 22 par. 1) establishes equality of Greek and foreign workers.

c. Greek or foreign seafarers, the individual/private sea employment contracts of whom includes an express Greek Law selection clause (art. 3 of EC Regulation 593/2008 on the law applicable to contractual obligations, “Rome I” and art. 25 Greek Civil Code).

d. Greek Collective Maritime Labor Agreements and basic legislation, particularly welfare, health and safety regulations, working conditions regulations etc. which are held to be public policy provisions and which are beneficial for the seafarer, are applicable to contracts for service onboard Greek flagged or foreign flagged ships, even if a foreign law and not Greek law is expressly selected in the labor contract. If the ship is foreign flagged, it must be established that the ship/shipowner/employer and the employment contract is closely connected with Greece and Greek law, as it has been consistently held by Greek Courts with reference to the EC Regulation 593/2008 on the law applicable to contractual obligations, “Rome I”.

MARITIME LABOUR LAW ISSUES

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What are the implications of collective bargaining and collective agreements on maritime labor contracts?

Freedom of association is safeguarded in art. 23 para. 1 of the Greek Constitution. Greece has also ratified the ILO Freedom of Association and Protection of the Right to Organize Convention 1948 (ILO C87) and the ILO Collective Bargaining Convention 1981 (ILO C154). Trade unions of seafarers are organized into three levels:

i. professional trade unions,
ii. federations (most professional seafarers trade unions are members of the Panhellenic Seafarers Federation – "Πανελλήνια Ναυτική Ομοσπονδία – PNO"),
iii. con-federations (the most important being the General Confederation of Workers of Greece, to which PNO belongs).

The most significant maritime employers’ organization is the Hellenic Shipowners’ Association. Collective Seafarers Labor Agreements are concluded after negotiations between the shipowners and the seafarers unions, are considered to be statutory enactments, their minimum protection and wages’ minima prevailing over individual employment contracts, with immediate effect, binding even on seafarers who are not members of a union. Any individual verbal or written agreement that is contrary to the provisions of the relevant Collective Labor Agreement is invalid. They are in practice renewed annually, for different types of vessels.

Are there specific qualification requirements for sea employment?

The Greek Master, Officers and seamen must have qualifications and certificates as listed in the Code of Public Maritime Law. Greece has ratified the ILO Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 as amended (STCW Convention), with direct effect. Furthermore domestic legislation has been adapted to the European Community regulations on the qualifications and requirements for seafarer’s work, training, minimum age, medical certification, recruitment, discrimination protection and all other related issues.

Are there specific terms and conditions for maritime labour contracts?

Subject to the relevant Collective Labor Agreement in force, the provisions of which are binding and applicable, the general principles of freedom of contract apply to the individual sea employment contract, subject to the general protective provisions of the Civil Code, particularly article 281 on abuse of right, and of the EC Regulation 593/2008 on the law applicable to contractual obligations, “Rome I” as said above. The master and crew individual employment contracts must be in writing and are concluded by registration in the crew list. The contract must state the name of the seafarer, his date and place of birth, the capacity under which he serves, the name, tonnage, flag and international call sign of the vessel, the name of the shipowner/employer, the wages and the duration of the contract. It must be dated and signed by the parties and a copy must be handed to the seafarer.

What are the minimum and maximum working hours for seafarers?

Hours of work and overtime during which the seafarer is obliged to perform his duties onboard the ship are stated in the individual employment contract and are subject to the Code of Public Maritime Law, the Work Regulation for Commercial Ships (Royal Decree 806/1970), the Collective Labor Agreement in force. The seafarer is obliged perform extra duties upon orders of his superiors in exceptional circumstances. Typically the hours of work are eight hours per day, five days per week. Any work in excess is overtime. Due to the nature
of the sea employment, seafarers are in practice required to work additionally /overtime four (4) hours per day and also on Saturdays, Sundays and Holidays. Different overtime rates are provided for each one of the above situations.

Are there special provisions for annual leave?
Minimum number of days of regular leave are fixed by the relevant Collective Agreements, but may be replaced by financial compensation and in practice this is usually the case. Subject to the master's permission, the seafarers are entitled to shore leave for a few hours when the ship is in suitable location (art. 132 of the Code of Private Maritime Law and Collective Labor Agreements).

What is the duration of seafarers’ labor contracts and how are such contracts terminated?
- The duration of the contract may be for a fixed period of time or for a certain voyage, in which case it expires upon lapse of the specified period or voyage. A fixed period contract that expires during a voyage is extended until arrival at the port of destination or a suitable port for repatriation of the seaman. The duration of the contract may also be for an indefinite period of time or may be extended indefinitely in case of lapse of its fixed duration.
- The contract is terminated automatically in case of loss of the ship or loss of the Greek flag or sale of the ship at public auction (Code of Private Maritime Law art. 68). The contract may be terminated by mutual agreement of the parties. The master is entitled to terminate the contract at any time without notice, but if the termination is not justified the seafarer will be entitled to compensation. If the seafarer terminates the contract unjustifiably prior to its time limit, he may be deprived from compensation and repatriation rights and may also be subject to his employer's claim for untimely contract termination and deriving damage.
- The seafarer is entitled to repatriation upon due termination of his contract. Greece has ratified the ILO Repatriation of Seamen Convention 1926 (ILO C23). Repatriation includes payment of the relevant expenses and care of all formalities on the part of the employer.

Which are the main means of protection of seafarers for unpaid wages?
- Wages payable to the seafarer under the contract include monetary compensation for the performance of his duties, food and catering in natura, even tips when applicable, as for example on cruise ships.
- According to the general protective principles of Greek law (Civil Code art. 664-665, Code of Private Maritime Law), wages cannot be set off or retained against other claims of the employer against the seafarer to the extent that such are necessary for his own and his family's maintenance, they are subject to attachment by third parties as part of the shipowner's property.
- Wages have a lien /maritime privilege on the vessel's proceeds in case of auction.
- The intentional non-payment of the wages is a criminal offense of the shipowner (Law 690/1945 and Law 2336/1995). However, in case of condemnation of the shipowner for non-payment of the wages, he can be punished by imprisonment up to six months and a fine, but the seafarer does not get any recovery.
- As mentioned above, Collective Labor Agreements apply equally to Greek and to foreign seafarers, according to art. 83 of the Code of Private Maritime Law. However, inequality of pay between Greek and foreign crewmembers of the same ship has been allowed by Law
1376/1983 on measures against the crisis in the maritime industry, by which it has become possible to shipowners’ associations to conclude collective agreements with foreign trade unions stipulating that the wages of the foreign seafarers onboard Greek flagged ships be calculated on the basis of the local foreign standards even if they are lower than the Greek respective ones. Although it has been argued that this contravenes the constitutional principle of equality (art. 22.1 of the Greek Constitution), it has been held by Greek courts that the public interest prevails in this case.

Which are the main applicable legal instruments on health, safety and maritime labor accidents?

Greece has ratified - between others - the following important international tools: the ILO Merchant Shipping (Minimum Standards) Convention 1976 (ILO C147) and the International Convention for the Safety of Life at Sea 1974 (SOLAS) as amended, as well as its Protocols, the ILO Prevention of Accidents (Seafarers) Convention 1970 (ILO C134) for the application of which the Presidential Decree 1349/1981 has been enacted setting safety measures onboard,

- the ILO Accommodation of Crews (Supplementary Provisions) Convention 1970 (ILO C133),
- the ILO Food and Catering (Ships Crew) Convention 1946 (ILO C68),
- the ILO Seafarers’ Welfare Convention 1987 (ILO C163),
- the ILO Shipowners’ Liability (Sick and Injured Seamen) Convention 1939 (C55), which provides for obligation of the shipowner to offer medical care onboard and to transfer an injured or sick seaman to hospital ashore if necessary.

Furthermore, all European Community Regulations on welfare, health and safety apply automatically in Greece and most of the relevant European Directives have been implemented into Greek law. Greece was one of the original signatories to the Paris Memorandum of Understanding 1982 on port inspection and control procedures and has subsequently implemented the European Council Directive 95/21/EC of 1995 and its amending Directives, concerning the enforcement by the member states of the international standards for ship safety, pollution prevention, living and working conditions onboard (Port State Control).

How are seafarers protected in case of sickness or injury during their service?

In case of a work-related illness or injury, the seafarer is entitled, according to art. 66 of the Code of Private Maritime Law, to full medical treatment and to his wages. If the employment contract is terminated due to the illness or injury, the seafarer will be entitled to wages (sickness wages) and medical costs up to four months from termination of the contract. Same is provided in the Collective Labor Agreements.

Are seafarers entitled to compensation in cases of labour accidents?

Compensation is only paid in case of accident, which results to temporary or permanent, partial or full incapacity for work. Illness which is related and occurs due to the sea service or which results to incapacity due to omission of the shipowner to provide proper medical care is treated as accident and entitles the seafarer to “labor accident” compensation.

a. Law 551/1915 provides for two alternative regimes of compensation:

- The first regime provides for non-fault/strict liability of the shipowner/employer and provides for compensation as follows, calculated on the basis of the seafarer’s full wages (including payments in natura):
i. in case of death of the seafarer the compensation to which his dependent family members are entitled is – by a special calculation provided in the law – grossly fifteen months’ full wages,

ii. in case of total (100%) and permanent disability for work the compensation is – by a special calculation provided in the law – grossly 18 months’ full wages,

iii. in case of permanent partial disability for work, which is expressed by a percentage of disability figure, the compensation is – by a special calculation provided in the law – the respective percentage of the above under ii. amount.

iv. in case of total and temporary disability for work the compensation is – by a special calculation provided in the law – the half of the seafarer’s wages for a maximum period of two years.

v. in case of partial and temporary disability for work, for a maximum period of two years, the compensation is the respective percentage of the above under iv. amount.

The second regime of compensation is provided by art. 16 of Law 551/1915 and requires intentional act or violation of specific enacted safety rules on the part of the shipowner or his employees. Article 16 refers directly to the general civil law on wrongful acts and omissions (Civil Code 914 ff) and the compensation includes the total wages the seafarer would have earned in the rest of his professional life, if not for the disability. In case of death, the dependent family members are entitled to the full amount which they will be deprived of.

b. Additional compensation is provided for the moral damage sustained either by the injured seafarer or by his beneficiaries in case of death, based on art. 932 Civil Code. The amount depends on the circumstances of the accident, the gravity of the shipowner's offense, the social and financial status of the parties and is at the discretion of the court. Moral damages require negligence on the part of the shipowner, but not necessarily violation of specific safety rules.

c. Contributory negligence on the part of the seafarer for the injury may lead to respective decrease of the amount of his compensation, but only if the seafarer violated specific orders or safety rules that had been expressly and manifestly communicated to him by the shipowner and under all circumstances the decrease for contributory negligence can never exceed one half (½) of the compensation otherwise awarded.

What are the limitations for bringing an action for unpaid wages or compensation?

Claims for unpaid wages are subject to one year time limit, which commences at the end of the calendar year in which the claim arises. Claims for disability/death compensation are subject to twenty years for the non-fault strict liability type of Law 551/1915 and to five years for the tort/negligence full compensation of article 16 of Law 551/1915 and the Civil Code. Same five years’ time limit applies for moral damages.

When do Greek Courts have jurisdiction to try cases of seafarers working onboard foreign flagged vessels?

The jurisdiction of Greek Courts in maritime labor disputes is determined by the Code of Civil Procedure and by the EC Regulation 44/2001 on Jurisdiction, Recognition and Enforcement of judgments in civil and commercial disputes. The general rule is that the court of the defendant/employer's domicile or residence – and in case of a corporation the place of its seat - has jurisdiction over the dispute. The “seat” is not only the registered seat but also and more importantly the actual place of business of the corporation. Greek Courts are thus
bringing within their jurisdiction foreign corporations, administrators/registered owners/beneficial owners of ships, flying the Greek flag or foreign flags, if these have an office or branch in Greece and it can be established that this is the actual place of their business.

**Is it possible to arrest a vessel or a sister-ship as a means of securing a seafarer’s claim?**

Greek Law does not provide for actions in rem against a ship, but only actions in personam against the shipowner. However the arrest of a ship is possible under Greek Law in order to secure a claim against the registered owner and/or the beneficial owner. Associated or sisterships, i.e. ships that do not have the same registered owner, cannot be arrested. An immediate order can be obtained within short time from relevant application with the Judge on duty. Greek Courts usually do not impose a bond on the applicant seafarer.

**Is there a privilege for seafarers’ claims in case of a public auction of a vessel in Greece?**

Public auction of a ship to enforce final and enforceable court decision on seafarer claims is governed by the Code of Private Maritime Law and the Code of Civil Procedure. The recognition and extent of preferential claims in case of auction is governed by the law of the flag, but the ranking of privileges, being procedural issues, are governed by the lex fori, i.e. the Greek Law, according to which seafarers’ claims, including claims deriving from labor accidents, are in the second rank of privileges, preceding mortgages.
What is the importance of Shipping for Greece?

Shipping is one of the two basic industries in Greece, the other being tourism. Greeks since classical times have always been a seafaring people having traded all over the Mediterranean and having established colonies as far away as France. During the Napoleonic Wars in the 18th Century the Greeks transported goods from the Eastern Mediterranean to the Western Mediterranean. In 1870, the Greek fleet numbered some 2,500 sailing ships, one of the 10 largest fleets in Europe. On the eve of World War I, Greece had the 9th fleet in Europe with about 800 cargo ships. On the eve of World War II, Greece had the third largest free fleet of cargo ships, after Britain and Norway. During the war Greece lost two-thirds of its fleet, but the Greeks were able to purchase 100 Liberty ships as well as another 400 ships and thus entered modern times fully equipped to take on the challenges of the time. The Oceangoing sector today serves the entire world, transporting goods to all parts of the world, numbering over 4,700 Greek-owned ships many of them under Greek flag.

Did the State assist in the development of shipping in Greece?

The first modern legislation which greatly assisted the development of shipping in general was the enactment of L.D. 2687/1953 on “Investment and protection of foreign capital” (“L.D. 2687/1953”). Article 13 of L.D. 2687/1953 treated ships over 1500 GRT as foreign capital and allowed their registration under Greek flag, in the ownership of a non-Greek entity but belonging to Greeks, with enhanced privileges. The provisions of L.D. 2687/1953 allowed shipowners to change the flag of the ships and to sell, mortgage or charter them freely to foreigners without requiring any permit to do so. Further, L.D. 2687/1953 offered to shipowners assistance, dispensation and guarantees as to the free disposal of foreign exchange from the management or sale of the ships, the composition of the crew, the taxation, her requisition, the management and operation of the shipping business and the settlement of differences arising from the implementation of the governmental decree, by arbitration. In addition, the formalities relating to the registration of the ships or the registration or discharge of mortgages have been simplified.

What regime governs shipping companies in Greece?

In 1967 and 1968 two major enactments were introduced (Law 89/1967 and Law 378/1968) which, inter alia, allowed foreign shipping and other companies to be established in Greece under favourable tax and other benefits. This legislation which now applies only to shipping and related companies, has withstood the test of time and practically all shipping companies are established and operate under this legislation.
as amended. Basically this legislation simplifies the bureaucratic obligations for the establishment and management of their operations in Greece and allows for tax holidays.

What is today’s number of Greek shipping companies? What is the size of the Greek-owned fleet?
This year (2011) there are a total of 762 Greek-based ship management companies. The number of Greek vessels in 2011 stands at 4714. The top 30 owners in 2011 accounted for 52% of the Greek fleet.

What is the importance of Ship Finance?
Ships are a commodity that requires very large amounts of capital. In addition to substantial amounts of equity, loans have been required to finance maritime commence from the earliest times. In the Hellenistic and Roman periods such loans were made on the security of the ship and its cargo, although the structure of such loans had little resemblance to modern ship finance transactions.

What is the object of Lender and what are his objectives in a Ship Finance transaction?
The object of the Lender, which in most cases is a Bank specializing in Ship Finance, structures its security in order to avoid risk in financing the acquisition and operation of the Ship. Hence forth we shall use the term Bank rather than Lender.
The objectives of the Bank may be summarized as follows:
Against the advance of a large sum the Bank requires as primary security a mortgage on the ship. The Bank may take other mortgages on other ships as well. It will normally take an assignment of any time charter and of the earnings of the ship so that it may benefit as assignee. The Bank will also take an assignment of insurance policies and P+I Club cover in order that in the event of a total or partial loss of the ship the Bank may be suitably secured. The effect of the above is to ensure that the Bank is almost completely secured in that the Bank shall have priority over all other claims of other creditors.

What are the principal security documents by which the Bank is protected?
The basic document which regulates the relationship between the Bank and the owner is the Loan Agreement by whatever name it is called. In international transactions the law which regulates the agreement is, in the great majority of cases, English law.
The Loan Agreement, in addition to the terms and conditions which regulate the relationship, sets outs the principal documents which secure the advance(s) of the Bank. The primary such document is the ship mortgage.
The ship mortgage is usually constituted by a mortgage deed which is notarial in Civil law countries or by a mortgage form executed as a deed in Anglo-Saxon jurisdictions and in some Anglo-Saxon jurisdictions such as the U.K., Cyprus, Malta, Bahamas etc. is accompanied by a collateral deed, which sets out in detail the mortgage undertakings and also the assignments of the earnings and the insurances, called the “Deed of Covenant”.

What is the primary object of a mortgage?
It is to ensure that if the owner defaults in the payment of the mortgage debt or the performance of its obligations, the mortgagee can sell the ship to recover the amounts
due. The principal right of a mortgagee in a default situation is to realise its security by selling the ship to pay the mortgage debt. The obligations of the owner will generally be set out in detail in the mortgage documents, although certain limited obligations are implied by law. Once default is established, the mortgagee must then consider what powers it has under the documents or otherwise under the law.

What regime applies to a Greek ship mortgage?
The standard Greek mortgage resembles mortgage on immovable property. Such mortgages however, are not flexible.
In order to make the mortgage more attractive to financiers, Article 16 of L.D. 2687/1953 provided for enhanced rights for the mortgagee. It allowed the mortgagee to take over the management of the ship in case of default. A further legislative Decree no. 3899/1958 introduced the concept of “preferred mortgage” which enhanced further the rights of the mortgagee. The Greek preferred mortgage is based on the preferred mortgage legislation of the United States of America. It is not an exaggeration to say that this legislation was instrumental in the development of the Greek flag.

What is the definition of default?
A default is any failure to perform a contractual or other legal duty; it usually describes a breach by the owner of the terms of the mortgage. The term may also describe a breach of a collateral agreement between the owner and mortgagee such as the loan agreement to which the mortgage relates. Such instances of breach will amount to defaults under the ship mortgage where there is a “cross-default” provision in at least one of the relevant agreements to this effect.

What are the main categories of default?
There are three main categories of default. First, a “payment” default which occurs when the owner fails to make a payment due. Second, a “status” default occurs if an event happens which affects the legal or financial standing of the owner. Third, a “covenant” default will occur when the owner commits a breach of one of the other undertakings in the mortgage documents.

What is the effect of default?
The ordinary rules of contract law apply to the loan agreement and the mortgage deed and accordingly the promissory terms of the mortgage deed will be conditions, warranties or innominate terms.
A condition is a fundamental term of the contract; it is a term which goes to the root of the obligation that is to be performed.
The term “warranty” describes a minor term of the contract. In the case of breach, the normal remedy is damages, so the party not in default is not released from its own obligations.
In general, breach of a condition gives the party not in default the right to treat the contract as repudiated, whereas breach of a warranty gives rise only to a claim for damages.
A particular term might straddle the two categories of condition and warranty: while the breach of such a term would not ordinarily give rise to a right to the contract as
repudiated, in some circumstances the effect of the breach would be so substantial that damages would not be a sufficient remedy. Such terms are described as “innominate”.

Enforcement. What are the options?
Where the mortgagee decides to enforce the security of the mortgage, it has two principal options. It can either take possession of the ship and subsequently sell the ship under its power of sale or it can arrest the ship and apply to the court for a judicial sale.

How does the mortgagee take possession?
When the power to take possession has become exercisable, the mortgagee may take possession of the ship wherever the ship may be, whether in port or at sea. If the ship is in port, then the mortgagee may take actual possession of the ship by placing a master and crew appointed by the mortgagee. If the ship is at sea, or it is not possible for other reasons for the mortgagee to take actual possession of the ship, the mortgagee may take constructive possession by giving notice of possession to the parties concerned. Where the master agrees to comply with the mortgagee's orders, then the ship will be in the constructive possession of the mortgagee. If the master and the owner reject the notice of possession and the master continues to comply with the orders of the owner, then the mortgagee will not have taken possession and will have to wait until the ship reaches port, when it can attempt to take actual possession or obtain a court order from the court having maritime jurisdiction in that port giving possession of the ship to the mortgagee.

What are the rights of a mortgagee in possession?
When the mortgagee has taken possession, it can operate the ship as the owner. The mortgagee's powers are set out in detail in the mortgage deed. The more important powers relate to earnings; charters; repair and maintenance; insurance and claims. The mortgagee's powers and rights are, in general, similar in the major shipping jurisdictions irrespective of whether the law applicable belongs to one system or another. For example a Greek preferred mortgage gives similar powers and rights as an “English” mortgage.

What are the rights of lien holders?
Irrespective of whether the mortgagee has taken possession of the ship, any claimant who has either a maritime or statutory lien can arrest the ship to enforce its claim. The mortgagee taking possession does not alter the legal or the beneficial ownership of the ship, nor does it affect the rights of lien claimants to proceed in rem or in personam against the ship.

What is the principal remedy of the mortgagee?
The principal remedy on a default is to sell the ship either under the power of sale granted to the mortgagee or in a Court sale. Normally, it is expressly provided in the mortgage deed or deed of covenants that a registered mortgagee has the right to sell the ship by private treaty. Alternatively, and in the great majority of cases, the sale takes place through the Court by public auction.
In civil law jurisdictions the judicial sale is in the charge of the notary and in Anglo-Saxon jurisdictions the officer in charge is the Marshal of the Court.

Who controls the proceeds of sale and what are the priorities?

In an Anglo-Saxon jurisdiction the proceeds of sale are paid into Court and the normal order of priorities is as follows:
(i) First, Admiralty Marshall's costs and the legal costs of the arrestor;
(ii) Second, maritime lien claims;
(iii) Third, possessory lien claims;
(iv) Fourth, mortgages and charges;
(v) Fifth, statutory lien claimants;
(vi) Sixth, the balance of the fund, after payment of the above claims will be paid to the owner or, if insolvent, to the liquidator or trustees in bankruptcy, or any judgment creditor who has obtained a charging order.

The above order of priorities is similar to the order of priorities in the 1993 International Convention on Maritime Liens and Mortgages, article 5.1.

In a civil law jurisdiction the proceeds are paid to the notary who draws up the order of priorities according to the provisions of the State in question.
In general, the differences in the order of priorities are not major.

What are the secondary remedies of the mortgagee?

In addition to the mortgage of the ship, the mortgagee will generally be the assignee of the owner's insurance policies, the earnings of the ship and any claims that the owner may have against third parties arising in connection with the ship, e.g. a claim for general average contribution.

What additional steps should a mortgagee take following a default?

(i) As soon as default occurs, the mortgagee should immediately give notice to all third parties and direct that all amounts that would otherwise have been payable to the owner should be paid to the mortgagee.

(ii) If the owner’s insurance policies contain the usual loss payable clauses, then, as soon as the mortgagee has notified the brokers and the insurers of the default, the insurers will be required to pay all insurance claims direct to the mortgagee.

(iii) Where the earnings of the ship have been assigned to the mortgagee and are not already payable direct to the mortgagee, the mortgagee should immediately upon the occurrence of a default give notice to the charterers and cargo owners that all hire, freight or other amounts payable to the owner should be paid to the mortgagee. If the charterer or cargo owners pay any such amount to the owner after receipt of such notice, this will not discharge its liability to the mortgagee and will have to pay the amount due to the mortgagee. If the mortgagee has taken possession of the ship then all earnings will be payable to the mortgagee in any event, even if the owner has not assigned the earnings to the mortgagee. Generally, if earnings have been assigned to the mortgagee, the charterer will not be able to recover from the mortgagee earnings paid in advance to the mortgagee even if the charterer has a right to do so against the owner.
(iv) If general average has been assigned to the mortgagee as part of earnings, and general average has been declared and amounts are payable to the owner under a general average adjustment, then the mortgagee should give notice to the parties involved, namely the insurers, the cargo interests and the adjusters, that all such amounts payable to the owner under the adjustment should be paid to the mortgagee.

(v) If claims by the owner against third parties either in contract or in tort arising in connection with the ship have been assigned to the mortgagee, then the mortgagee should give notice of the assignment to the third party against whom the claim has been or will be made and, in default of payment, commence the appropriate court or arbitration proceedings against the third party to recover the amounts due. Such assignments of rights of action are valid, because the mortgagee has a legal or equitable interest in the ship forming the subject – matter of the action.

(vi) The mortgagee will also have the right after the occurrence of the default to pursue claims by the owner against third parties under the terms of either the Deed of Mortgage or the Deed of Covenant.

We have set out the basics in order to give an overview of the peculiarities of Shipping Finance. It is a special branch of finance which, because of the very large sums involved and the importance of shipping in trade, requires deviation from the usual financial transactions, the financiers requiring enhanced securities in order to provide the funds required.
How are shipping disputes resolved in Greece?

The Maritime Court of Piraeus has exclusive jurisdiction to resolve maritime disputes in the Attica region. However, extra-judicial/Alternative Dispute Resolution “ADR” methods (Arbitration and recently Mediation) have been introduced into the Greek legal system to resolve maritime and commercial disputes, in order to capitalize on the advantages of ADR over the more complex, slow, money-and-time-consuming litigation. The Piraeus Association of Maritime Arbitration “PAMA” was founded to effectively address disputes in the worldwide shipping and commodity trades. A PAMA arbitration is conducted in accordance with the PAMA Rules for Maritime Arbitration 2007, which are governed in terms of procedure by Law 2735/1999 on International Commercial Arbitration.

What are the advantages of incorporating the PAMA Rules?

Unless the arbitration clause expressly provides that the PAMA Rules shall apply, the arbitration procedure shall be conducted in accordance with Law 2735/1999. By incorporating the PAMA Rules in the arbitration clause, the parties can derive great benefits. The Rules allow a party to consolidate disputes, to force the other party to arbitrate without having to compel arbitration in court, to have more flexibility, shorter time limits and a quicker and less expensive procedure.

Which disputes may be referred to and arbitrated by PAMA?

The contracting parties may, by an arbitration agreement, refer to PAMA any dispute arising in a shipping or commercial transaction. Such agreement may be incorporated in the contract as an arbitration clause or may form a separate agreement. Reference in a contract to another document incorporating an arbitration clause is valid and binding on the parties. An arbitration clause in a Bill of Lading is binding on the carrier, the shipper and the subsequent assignees of the BoL.

What is the wording of a common arbitration clause or agreement?

“Any dispute arising out of, or in connection with this Agreement shall be referred to and resolved by arbitration in Piraeus in accordance with the PAMA Rules in force”. However, it is customary for the parties to describe therein how the arbitration will be initiated, the number of arbitrators, the procedure of their appointment and the consequences of failing to appoint an arbitrator.
What if litigation proceedings have commenced before a court regarding a dispute for which there is an arbitration agreement?

A party, against whom litigation proceedings are brought regarding a dispute, which under an arbitration agreement is to be referred to arbitration, may apply to the court for a stay of proceedings. If the arbitration agreement is valid, the court refers the dispute to arbitration. However, a party is entitled to file before a competent court an application for injunction or security measures to protect its interests before or after the arbitration proceedings have commenced.

Where are the hearings held?

Unless the parties agree otherwise, the place of arbitration is Piraeus, Greece.

What is the language of an arbitration under the PAMA Rules?

The arbitration shall be conducted in the Greek language, unless a party expressly disagrees in writing, in which case the arbitration shall be conducted in the English language.

How is a PAMA arbitration proceeding initiated?

The claimant notifies in writing to the other party that he is invoking the arbitration clause in the contract, stating the factual circumstances giving rise to the claim, the amount claimed and any other demand. This document should be notified to PAMA within 15 business days from its notification to the other party.

Does PAMA charge an administrative fee?

A non-refundable administrative fee, of €500 for a documents-only arbitration and of €2,000 for an oral hearing arbitration is payable within 15 business days from the notification of the document invoking the arbitration clause. If the respondent submits a counter-claim, he shall bear the same obligation to pay the administrative fee.

Who are the members of PAMA and where can one find PAMA arbitrators?

Members of PAMA are commercial people of varied backgrounds and wide-ranging experience in numerous areas of the shipping industry including maritime lawyers, law professors, judges, shipowners, shipbrokers and marine engineers. PAMA publishes a roster of its members containing a description of their background, experience and expertise.

Are PAMA arbitrators impartial?

Under the PAMA Rules and Greek laws, arbitrators are independent and should attend all matters with strict impartiality irrespective of whether they are party-appointed and owe an equal duty to both parties. In case an issue arises regarding the proposed arbitrator’s impartiality, the latter should disclose this immediately to the parties. A party may apply for removal of an appointed arbitrator if there are justifiable doubts as to his impartiality.

What are the arbitrators’ fees?

Each arbitrator shall be entitled to a fee calculated on the basis of the value of the amount in dispute and varied depending on whether the arbitration is conducted by an oral
hearing or by documents-only, the time of the procedure and complexity of the dispute. It is based on a published Table of Fees determined and periodically readjusted by PAMA, which sets the upper and lower limits.

**How is an arbitrator appointed?**

According to the PAMA Rules and unless the parties agree otherwise, if the dispute does not exceed €50,000 a sole arbitrator shall be appointed upon agreement of the parties within 15 business days from the commencement of the arbitration. Should the claim exceed €50,000, the Tribunal shall consist of three arbitrators. Each party shall appoint one and the arbitrator’s acceptance should be notified to PAMA within 15 business days. The two appointed arbitrators shall appoint the third and chairman of the Tribunal. Such appointment, together with the appointment of an agent for service within Attica, should be notified in writing to the other party within 15 business days of the commencement of arbitration.

**What is the procedure if the other party does not appoint an arbitrator?**

Under the PAMA Rules, in case the parties fail to appoint either the sole arbitrator or their own or the two appointed arbitrators fail to appoint the chairman of the Tribunal, such appointment shall be made by the President of PAMA from the Roster of Arbitrators within 5 business days of the submission of a relevant request by any party. If the PAMA Rules have not been incorporated, then the Court of First Instance shall appoint them, upon application of a party.

**Following the appointment of arbitrators, what are the next procedural steps in an arbitration conducted by an oral hearing?**

The Tribunal shall meet to regulate the arbitration procedure. It may invite the claimant to submit a supplementary description of the claim within 20 business days or it may invite the parties to attend preliminary meetings in order to properly prepare the oral hearing, if the dispute is complicated.

The parties are invited to submit written pleadings and all evidence within 20 business days. The claimant may modify his claim or factual or legal basis with his pleadings at the latest. The respondent may submit a counter-claim with his pleadings. Within 5 business days of receipt of the parties’ pleadings and evidence, the Tribunal invites them to submit a rebuttal within 10 business days or 20 business days if a counter-claim was submitted. The respondent may modify his counter-claim with his rebuttal.

A report by a person possessing special expertise or knowledge may be submitted to the Tribunal and brought to the attention of the parties at least 5 business days before the commencement of the oral hearing. The expert may be requested to be examined and cross-examined during the hearing.

The Tribunal shall fix the hearing date no later than 60 days from the submission of the parties’ rebuttals and determine the number of witnesses to be examined before it. Each party should inform the Tribunal of the witnesses it intends to examine at least 10 business days before the commencement of the hearing and the Tribunal shall advise the other party of these witnesses at least 5 business days before the hearing. The hearing may also take place by teleconference if need be.
Within 7 business days of the end of the hearing, the parties may submit a memorandum of evaluation of the hearing.

Can an arbitration be conducted without a hearing?
If the claim does not exceed €50,000, the arbitration shall be conducted by documents-only, unless the arbitrator rules otherwise. Should the parties agree, a documents-only arbitration may be conducted even if the claim exceeds €50,000. Regarding the submission of pleadings, evidence and rebuttals the same as above also apply to documents-only cases.

What is the jurisdiction of the Tribunal?
An arbitration clause incorporated in a contract consists a separate agreement and remains valid even if the main contract is void. Thus, the Tribunal shall have jurisdiction to rule on its own jurisdiction and on the existence and validity of the arbitration agreement.

If there are many parties to a dispute, can the various cases be consolidated in one arbitration proceeding under the PAMA Rules?
If upon a request of a party, two or more Tribunals determine that common issues of fact or law arise in the arbitration procedures pending before them, they may decide to hold joint hearings, saving time and expense by providing an efficient and coordinated proceeding.

Can a party apply to the arbitration Tribunal for interim measures?
The Tribunal, upon application, may order interim measures if considered necessary against the other party either conditionally on providing appropriate security or unconditionally.

Should the parties be represented by lawyers before the Tribunal?
It is not mandatory to be represented by lawyers. However, the parties should carefully consider proceeding without an attorney at law or a legal counsel whenever substantial sums of money or complex points of law are in issue.

What if a party fails to attend an oral hearing or fails to submit its pleadings or evidence?
If, without proving sufficient cause, a party fails to attend or be represented at a hearing of which due notice was given, or fails after due notice to submit written pleadings or evidence, the Tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written submissions or evidence on his behalf, and may issue an award on the basis of the evidence before it.

Can the parties choose the substantive law to apply to their dispute?
The Tribunal shall apply the substantive law agreed by the parties. In the absence of an express or implied choice of applicable law, the Tribunal shall apply the law it deems more appropriate for the particular case.

What if the three arbitrators do not agree?
If the Tribunal consists of more than one arbitrator, the decision is issued by simple majority. If the decision of the arbitrators is unanimous, they may issue an award on any issue of the arbitration. If however a majority is not achieved, the vote of the chairman of the Tribunal renders the award final.
When will the Tribunal issue the award?

The Tribunal shall issue the final award within 60 days of the submission of the memoranda of evaluation of the hearing or the expiration of the time limit provided for such submission. Then, it shall notify the award to the parties.

Are the arbitration awards reasoned?

All awards are issued with reasons. An award may be issued without reasons if the parties have previously and expressly agreed. However, it may be accompanied by a separate unofficial and confidential document which briefly states the reasons.

Can PAMA arbitrators issue awards in a foreign currency?

PAMA arbitrators can award sums in a foreign currency.

Are arbitration awards published?

Arbitration awards are confidential and are not published in case-law reviews or legal journals. However, an award may be published, without disclosing the names of the parties, arbitrators, legal counsels or ship concerned, if the parties agree and it is considered to be of general interest or particular significance.

Are PAMA arbitration awards enforceable in court?

An award made by the Tribunal pursuant to an arbitration agreement is final and binding on both parties and enforceable according to the provisions of article 904 of the Greek Code of Civil Procedure. An award made by the Tribunal pursuant to an arbitration agreement may be enforced in Greece in the same manner and to the same effect as a judgment or order of the court, after filing it with the Clerk of the competent Court of First Instance, pursuant to article 918 of CCP.

Are PAMA arbitration awards appealable?

The award is not-appealable. An award may be corrected or interpreted upon motion of a party within 30 days from the notification of the award. However, the award can be challenged, exclusively for narrowly defined legal issues arising out of the award, by filing an annulment application with the Piraeus Court of Appeal. The Court may revoke an award only if it is proven that the arbitration agreement was null and void or for lack of substantive jurisdiction, or for a serious irregularity in the appointment of arbitrators or the arbitration procedure or the award or if the award is against Greek public policy. The annulment application should be filed within 3 months of the date of notification of the award to the applicant and does not suspend the award’s enforceability effect. The applicant may apply to the Court for suspension of its enforceability effect, which the Court may grant if it considers that the application for annulment would probably succeed. The judgment of the Court of Appeal may be challenged by an appeal in cassation to the Supreme Court.

How will the arbitration costs be allocated?

Upon issuing the final arbitration award, the Tribunal advises the parties of the fees and expenses of each arbitrator and the arbitration and allocates the costs upon consideration of all the circumstances of the arbitration and especially the extent of success and defeat of
each party. The Tribunal may ask the parties for an advance payment against the estimated
total fees of the arbitration and it may refrain from communicating the award to the parties
until all fees have been fully paid.

**What if the parties have settled their dispute before the issuance of the award?**

If the parties have reached a settlement agreement before the issuance of the award, upon
request of the parties, the Tribunal shall record the settlement reached and agreed by the
parties in the form of an award, which shall have the same status and effect as any other
arbitration award.

**Is there any other type of ADR for maritime disputes?**

Mediation is a non-binding process which can result in an amicable settlement of a
maritime or any other commercial dispute in a quick, confidential and cost-effective way
while preserving long-term business relationships. Although PAMA has not formulated
terms for the resolution of disputes by mediation, a new legislation passed in Greece
enables the parties to submit a dispute to mediation at any stage. More on mediation can
be found in chapter 1.5.
Laws governing taxation of Greek flag ships
The basic laws governing taxation of Greek flagged ships are the following:
Law 27/1975 Sections 1 - 24
Law 814/1978 Section 35 as amended by Law 3763/2009 Section 39
Law 3943/2011
Legislative Decree 952/1971
Law 2948/2001 Section 11
Law 438/1976 Section 9 paragraph 4
Law 318/2003 Section 41 paragraphs 1 and 2
Ministerial Decisions pursuant to Article 13 of the Legislative Decree 2687/1953 relating to registration under Greek flag of individual ships.

How are Greek flagged ships taxed in Greece?
Greek flagged ships are taxed irrespective of the income of the shipowner, according to their gross* tonnage and the year of their construction. Accordingly, the tax payable for a Greek flagged ship is based on the gross tonnage of the ship multiplied by a fixed amount of deemed profit per metric ton, instead of the actual income from the operation of the ship.

* It is clarified that for ships registered under the Greek flag prior to April 1975, the tonnage tax is calculated on the basis of the vessel's net tonnage.

Which are the persons who are liable for this tonnage tax*?
Liable to pay the ship's tonnage tax is the shipowner, whether an individual or a legal entity, who is the registered owner of the relevant ship on the first day of each calendar year, irrespective of the shipowner's permanent residence or place of incorporation, as the case may be.
Jointly and severally liable to pay the ship's tonnage tax is also the person managing the ship and collecting hire (whether such person is managing the ship on instructions from the shipowner, or from any Authority or due to any other reason) as well as the manager's representative, subject to the latter having accepted the relevant appointment in writing.

* This tonnage tax was first introduced back in 1957. Decades later, a large number of European countries introduced the tonnage tax as an appropriate method of taxing shipping income revenue; the three models of European tonnage tax are the Greek, the Dutch and the Norwegian.

Which are the persons which, through payment of the ship's tonnage tax, exhaust all tax liability?
Payment of the ship's tonnage tax exhausts all tax obligations of the shipowner and/or the shareholder or partner of the shipowner, in relation to their income from the operation of the ship. Further, the income of the shareholders or partners of a holding company, holding shares in shipowning companies are also tax exempt.
Payment of the tonnage tax also extinguishes tax liability in relation to capital gains arising out of a ship's sale, insurance proceeds or any other cause.
It is to be noted that in the case where the shipowner, be it a Greek or foreign company, is also engaged in other businesses besides the operation of the ship, the amount of said company’s income which is tax exempt is limited to the amount of net income or dividends made through the operation of the ship. All other non-shipping income is subject to ordinary tax rates.

Do disponent shipowners qualify for this tax?
There is no provision pursuant to which a disponent shipowner would qualify for the tonnage tax regime.

What is the time/date upon which tax liability is generated?
The person liable for the payment of the ship’s tonnage tax is required to file by the end of February each year, a tax return with the relevant economic authority and pay simultaneously ¼ of the amount of tax due. The remaining ¾ are payable in three equal installments payable in the course of June, September and December of the year of the filing of the relevant tax return. It is to be noted that unlike other tax obligations, tonnage tax is payable in four equal installments in the course of the taxable year, as described above.
For ships registered under the Greek flag after 1st January of each calendar year, tonnage tax is calculated monthly, starting from the month following the ship’s registration.

What ships fall under the scope of this special tax regulation?
I. Ships liable to pay tonnage tax are divided by Law 27/1975, into two Classes:
   a) What categories of ships are included in Class A?
      ▪ Motor vessel bulk carriers, tankers and refrigeration vessels with gross tonnage of 3,000 metric tons or more;
      ▪ Steel bulk carriers of dry or wet cargo and refrigeration vessels with gross tonnage between 500 and 3,000 metric tons that travel between Greek and foreign ports or between foreign ports only;
      ▪ Passenger ships that travel between Greek and foreign ports or between foreign ports only;
      ▪ Passenger ships of a gross tonnage of more than 500 metric tons which, over the past year and for a period of at least six (6) months, have effected exclusively, regular voyages between Greek ports or Greek and foreign ports, or between foreign ports only, for recreational purposes of their passengers, following public announcement. It is to be noted that in case a ship has remained idle as a result of force majeure, the above requirement of six (6) months is reduced to three (3) months.
      ▪ Drillships of a gross tonnage of over 5,000 metric tons and floating refineries and rigs of a gross tonnage of over 15,000 metric tons used for exploration, drilling of the sea bed, pumping from the sea, refining and storage of oil or natural gases.
   b) What categories of ships are included in Class B?
      All other motor vessels, sailing boats and other small craft
II. A separate class of ships that fall under the scope of the tonnage tax regime are the ships registered pursuant to Article 13 of the Legislative Decree 2687/1953 “On Protection of Investment and Foreign Capital”. In fact the vessels registered pursuant to these provisions represent the great majority of Greek flagged ships engaged in international navigation.
   a) What ships may be registered under the Greek flag pursuant to Article 13 of the Legislative Decree 2687/1953?
      For a ship to be registered on the Register of Greek Ships pursuant to Article 13, the ship must:
      ▪ have gross tonnage of over 1,500 metric tons; and
      ▪ be owned by a foreign company, the beneficial owner of which by a percentage of 50% plus, is a Greek* citizen.
* We are not aware of this citizenship requirement to have been extended to other E.U. citizens.
Further, an act of approval is required to be issued by a Joint Ministerial Decision which sets out the basic terms applicable to the relevant ship and is published in the Government Gazette. It is worth mentioning that the relevant Ministerial Decision has special “formal validity” and may not be amended without the consent of the relevant shipowner. Any disputes relating to the construction of the provisions of the Ministerial Decision between the shipowner and the Greek State or between any mortgagee involved and the Greek State, are to be resolved through arbitration, one appointed by each party. The arbitration award is final, irrevocable and enforceable.

Also, these Ministerial Decisions contain a “most favourable ship” clause, whereby it is provided that in the case of another comparable ship terms are granted which are more favourable to the ones applied to the relevant ship, the more favourable terms will be extended to the ship registered earlier.

b) What are the taxation-related provisions contained in the Ministerial Decisions for ships registered pursuant to Article 13?

As regards the taxation of the ship, for the entire period during which the ship remains registered under the Greek flag, the provisions of Law 27/1975 are applicable* with the following variations:

a. Until the end of the year 2007, tonnage tax is calculated in accordance with the figures contained in Article 6 paragraph 1 of Law 27/1975 as applicable during the first year that the Law 27/1975 was in force, with a further reduction of 40% to the applicable coefficients per ton of gross tonnage.

b. From the beginning of the year 2008 onwards, the amount of tax payable per metric ton of gross tonnage will be calculated on the basis of the amounts resulting following the above reduction.

c. The tonnage tax applicable to the ship pursuant to the above paragraphs (a) and (b), is further reduced by 50% for ships of a gross tonnage between 40,001 to 80,000 metric tons and by 75% for ships of a gross tonnage from 80,001 and over.

d. The ship, even if re-registered under the Greek flag, is entitled to the reductions or exemptions from tonnage tax provided for pursuant to Article 7 paragraph 1(c), which are applicable only to Class A ships that are registered under the Greek flag for the first time.

e. If the ship is supplied from Greek ports, bunkers and luboils do not qualify in this context, and the expense of such supplies is more than United States Dollars 30,000 per year evidenced through importation of foreign currency, a tax reduction is calculated:

- For expenses up to United States Dollars 60,000 – 10%
- For expenses between United States Dollars 60,001 and 100,000 – 15%
- For expenses between United States Dollars 100,001 and 150,000 – 20%

Above respective percentages are deducted from the amount of tonnage tax due. The exemption is calculated in the year following the year during which the expense was made and is applicable irrespective of the application of any other reductions pursuant to Article 7 of Law 27/1975.

*Detailed comprehensive analysis of how tonnage tax is calculated follows under Question 8 hereinbelow.

How is Tonnage Tax for Class A ships calculated?

Law 27/1975 distinguishes between Class A ships which had been registered under the Greek flag prior to April 1975, when the relevant Law came into force, and Class A ships which were registered afterwards. In view of the fact that Class A ships which had been registered prior to April 1975 would now be at least 37 years old, the authors consider relevant provisions of no practical value.
Tonnage tax in relation to Class A ships registered under the Greek flag after April 1975, is payable in United States Dollars or British Pounds (however, ships sailing within Greece receiving hire in Euro pay tonnage tax without import of foreign currency) and is calculated on the basis of the ship’s age and gross tonnage in accordance with the table below:

<table>
<thead>
<tr>
<th>Ship’s Age in years</th>
<th>United States Dollars per metric ton of gross tonnage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4</td>
<td>1.293</td>
</tr>
<tr>
<td>5-9</td>
<td>2.318</td>
</tr>
<tr>
<td>10-19</td>
<td>2.269</td>
</tr>
<tr>
<td>20-29</td>
<td>2.147</td>
</tr>
<tr>
<td>30 plus</td>
<td>1.659</td>
</tr>
</tbody>
</table>

The above amounts of tax are then multiplied by the following coefficients in accordance with the scale of gross tonnage, as follows:

<table>
<thead>
<tr>
<th>Scale of gross tonnage in metric tons</th>
<th>Coefficients</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 – 10,000</td>
<td>1.2</td>
</tr>
<tr>
<td>10,000 – 20,000</td>
<td>1.1</td>
</tr>
<tr>
<td>20,000 – 40,000</td>
<td>1</td>
</tr>
<tr>
<td>40,000 – 80,000</td>
<td>0.9</td>
</tr>
<tr>
<td>80,000 plus</td>
<td>0.8</td>
</tr>
</tbody>
</table>

*The above amounts of tax per metric ton of gross tonnage are the ones applicable for the year 2011 as set for the years 2011 – 2015 pursuant to Section 22 of Law 3943/2011. It is to be noted that the relevant amounts are increased yearly by 4% and the resulting amounts at the end of each 5 year period may also be changed by annual percentages adjusted every such five years.

It is to be noted that for the purposes of calculation of Class A Ships’ tonnage tax:
- the ship’s age is calculated as of 1st January of the next year of the ship’s delivery to the shipowner; and
- the ship’s gross tonnage is as registered in the ship’s Registry.

Which ships are liable to pay Consular Shipping Duties?

Class A ships are also liable to pay a Consular Shipping Duty pursuant to the Legislative Decree 952/71 which is calculated at United States Dollars 0.042 per metric ton of net tonnage up to 25,000 metric tons. The net tonnage over 25,000 metric tons is not taken into account. By way of illustration, the amount of this Consular Shipping Duty payable in relation to a tanker vessel of a net tonnage of 50,923.01 metric tons for the year 2010 was USD 1,050.

It is to be noted that Greek passenger ships which are obliged to transport Greek post to foreign ports for free are exempt from the relevant Duties

How is tonnage tax for Class B ships calculated?

Tonnage tax for Class B ships is calculated yearly per metric tons of gross tonnage and is payable in Euro.

Given that the scope of this article is focusing on ships engaged in international trade and in view of the fact that Class B ships are not as a rule involved in international trade whilst the amounts of tax involved are of little value, we deem it sufficient to quote a short table of indicative tax rates applicable in the year 2010.
Which are the grounds for reduction of tonnage tax liability?

Law 27/1975 provides for a reduction in the tonnage tax payable, in the following cases:

i. Reduction of tonnage tax due to the ship being out of operation

In case the ship is proved to have been out of operation as a result of repair works, lack of employment or any other cause, the tonnage tax is reduced by the number of days during which the ship was not operative, subject to the following conditions:

- In the case of Class A ships, the period during which the ship was not operative should have a duration of over two (2) consecutive months during the last or the current taxable year.
- In the case of Class B ships, the period during which the ship was not operative should have a duration of over twenty (20) consecutive days during the last or the current taxable year.

ii. Grounds for reduction of tax liability for Class A ships

- Ships built in Greece, are exempt from tonnage tax until they become 6 years old.
- The rate of tonnage tax applicable to Ships that sail on regular lines between Greek and foreign ports or between foreign ports, including cruise ships, is reduced by 50%.
- Ships which are under 20 years old and are undergoing repairs or any other type of technical works in Greece, the cost of which is covered by the importation of foreign currency, are not subject to tonnage tax for one year for every United States Dollars 100,000 of expenses. The relevant exemption begins from the first year following the completion of the work and may not exceed 50% of the total works cost and may not last for more than six (6) years.

In the case of ships falling under more than one of the above categories, tonnage tax may be reduced for one of the above causes, at the option of the shipowner to be irrevocably declared to the competent economic authority.

* It is to be noted that the above three cases in which the tonnage tax applicable to Class A ships is reduced, are applicable only to ships which are registered under the Greek flag for the first time.

iii. Grounds for reduction of tax liability for Class B ships

There is detailed provision in the Law for a reduction of liability of a shipowner of a Class B ship, on grounds, among others, of first registration under Greek flag, undergoing repairs in Greece, renewal of fleet and giving incentives for the building of ships in Greek shipyards.

Are ships of tonnage less than 20 metric tons (excluding yachts) subject to tonnage tax?

They are subject to tonnage tax though at a zero rate.

Which are the restrictions and sanctions upon anyone who fails to pay relevant taxes?

a) Sanctions:

In case of delay in filing the requisite tax return or of filing of an inaccurate tax return, additional amounts of tax become due as follows:

- In case of filing of the requisite tax return after the applicable deadline, an additional amount of tax becomes payable which is calculated on the basis of the amount of tonnage

<table>
<thead>
<tr>
<th>Scale in metric tons of gross tonnage</th>
<th>Tax rate in Euro per metric ton of gross tonnage</th>
<th>Tax in Euro</th>
<th>Gross tonnage in metric tons</th>
<th>Total Amount of tax per year in Euro</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>0,60</td>
<td>12</td>
<td>20</td>
<td>12</td>
</tr>
<tr>
<td>30</td>
<td>0,70</td>
<td>21</td>
<td>50</td>
<td>33</td>
</tr>
<tr>
<td>50</td>
<td>0,76</td>
<td>38</td>
<td>100</td>
<td>71</td>
</tr>
</tbody>
</table>

| 390 GREEK LAW DIGEST |
tax due according to the relevant tax return filed and is set at 5% per month of delay. This additional amount of tax however, may not exceed 25% of the tonnage tax due pursuant to the relevant tax return.

- In case of filing of an inaccurate tax return, an additional tax amount becomes payable and is calculated at a rate of 50% over the amount of tax concealed by the inaccurate tax return.
- In case of failure of filing the requisite tax return, an additional amount of tax becomes payable calculated at a rate of 100% of the tonnage tax due.

b) Restrictions:
- A Vessel may not be deleted due to sale, from any Greek ships registry and no mortgage may be registered over her, unless a certificate confirming that any tax amount due has been paid, issued by the competent Economic Authority, is produced.
- In case a ship is sold to buyer who maintains the ship under the Greek flag, the new owner is liable to pay the ship's tonnage tax for the period after acquisition. In that case, the tax return is required to be filed within the month following the transfer of title and the applicable tonnage tax is payable in equal monthly installments until the end of December. The former shipowner is entitled to a proportional refund.
- In case of non-payment of the tonnage tax due in a timely manner, the Authorities within Greece are required to refrain from issuing certificates for the ship enabling her to sail.

What is the taxation regime for commercial yachts registered under the Greek flag?
Commercial yachts registered under the Greek flag are subject to zero income tax, their acquisition is exempt from VAT and their charter hires are subject to VAT at a reduced rate of 6.5%.
Which is the main regulatory framework in Greece concerning the aviation?

Since Greece is a European Union (EU) member, the EU legislation is applicable within the Greek legal system and the respective pieces of European legislation are suitably adopted and enacted in Greece in accordance with the pertinent EU rules. EU regulations are directly applicable in the Member States while the directives must be transposed; EU law is generally considered to prevail over the national laws. Among Greek National Laws, the most important for Civil Aviation is ‘The Greek Aviation Code’ (Code of Aviation Law [C.A.D.]), which was promulgated with the Law 1815/1988, as amended by the Law 2065/1992 and the Law 3333/2005.

How many are the airports in Greece?

The main Greek airport, is the International Airport of Athens (A.I.A.), the Greek capital. There are also another 14 International State Airports, 26 National State Airports and 4 Municipal Airports.

In which way an aircraft could obtain the Greek nationality?

A. An aircraft is considered to be Greek when a percentage of more than 50% is owned by a Greek citizen or a citizen of another EU member-state or a company, but only when the following conditions are fulfilled:

- in general partnerships (O.E.), when all partners are EU citizens;
- in limited partnerships (E.E.), when all general partners are EU citizens and more than 2/3 of the total partnership capital has been paid in by EU citizens-partners;
- in limited liability companies (E.P.E.), when the administrators and the ¾ of the shareholders are EU citizens;
- in sociétés anonymes (A.E.), more than 60% of the nominal value of the company capital must belong to EU citizens and the 2/3 of the Board of Directors, its president, and all members of general meetings must have an EU nationality;
- in joint ventures, 2/3 of the partners must also be EU citizens and so their members of the Boards.

B. The Greek nationality is accorded only with the final Registration of the aircraft to the registrations book kept in C.A.A.; the owner/owners may obtain then a Registration Certificate.

What is the C.A.A. (Y.P.A.)?

C.A.A. stands for Hellenic Civil Aviation Authority, which is a civil service, under the Minister of Infrastructure, Transport and Networks, directed by its Governor and deputies governors.
Its mission is the organization, development and control of the State’s air transport infrastructure, as well as the drafting of proposals to the Minister of Infrastructure, Transport and Networks, concerning the overall policy formulation in air transport.

**Which are other authorities of the C.A.A.?**

The C.A.A. is responsible for handling and developing air transport inside the country and abroad. This also includes the organization of the Hellenic Air Space and the exercise of Air Traffic Control. C.A.A. controls the flights of the aircrafts in the (national) Greek airspace, under the direction of the Greek Government, supervises the application of safety rules in the airspace, inspects aircrafts and civil aviation crew suitability and grants the relevant certificates (to pilots of aircrafts and helicopters and crew).

**Why C.A.A. provides the flight licences?**

The Greek State has full and exclusive sovereignty over the Greek Air Space (art. 2 C.A.D). An aircraft is allowed to fly in the Greek air space, only when it is registered in the (Greek) Registration Book and has a Registration of Flight License. The authority that grants the flight Licences is the C.A.A., which does so according to the flight standards.

**Which are the Registries being kept by the C.A.A.? How the certification of registry is given?**

The C.A.A. (Y.P.A.) (art.17 C.A.D.), keeps the Registration Books of:

- All Greek aircrafts and all those recognized as Greek aircrafts
- Motor engines of aircrafts separately, along with the back up motor engines of the aircrafts
- Aircrafts with a foreign ownership, that belong to foreigners, but are leased by EU citizens
- Engines of aircrafts with a foreign ownership
- Mortgages on aircrafts and motor engines
- Attachment of aircrafts and motor engines
- Actions of asserting rights concerning aircrafts or motor engines and
- Leasing agreements on aircrafts or motor engines

All the above Registration Books are being kept in the C.A.A. but in foreign embassies, too. The registration is granted to the owner of an aircraft or a motor engine, after applying in the C.A.A. The C.A.A. examines the conditions and grants the Certification of Registration, as long as the prerequisites required for the ownership are at hand. Documents required for the registration, change of ownership and creation of a mortgage on aircraft and engines are determined by the C.A.A. The C.A.A. also grants the certificate of aircrafts flight ability, after having controlled the aircraft (a. 20, 34 CAD).

**Is the deregistration possible and what would be the reasons for that?**

The deregistration from the Greek registration books may take place when the owners of the aircraft decide to sell it to foreigners (non EU citizens) and as a result of the sale the
sellers’ percentage falls below 50%. In this case the sale is instantly cancelled for the time before the deregistration of the aircraft as follows:
The cancellation affects only a percentage of 1%, if the percentage obtained that brought about an equal share holding between EU and non EU citizens is more than one cm.
Or the whole percentage that has been signed over and provoked the equivalence of share holding (50% to each part) may be affected.

What are the rules followed about the purchase or the sale of an aircraft?
The purchase of an aircraft is a matter of agreement between the concerning parties. The Greek sales law shall apply, among those enforcing the permissioned and prohibited ownership.
For the purchase and transfer of ownership in an aircraft (art. 41 C.A.D.), a formal (only written) agreement between the owner of the aircraft and the purchaser is required, according to which the ownership passes to the purchaser for a legal reason (causa, namely the purchase agreement); the agreement must be registered in the registration book kept by the C.A.A.
Not only the owner of the aircraft may sell it, but the mortgagee, too, if this has been agreed with the mortgagor, or if there are more than one owners (collective ownership), they may sell the whole aircraft when the 4/5 of the share holders demand the sale.

Is the purchase of an aircraft, possible at auction?
It is, indeed, possible, according to Greek Civil Procedure Code (KPolD) (arts. 992 etc, 1014, 1015 C.P.C.). When an aircraft is sold at auction, a specific procedural scheme must be followed, similar to that applicable for properties sold by auction.
The acquirer of an aircraft by auction after its sale obtains full ownership, free of mortgages, repossessions etc.
(The aircrafts of the Olympic Airlines S.A. will be possibly sold at auction in Greece, because of the special liquidation of the company).

Are financial and operation leases known in Greek legislation?
The Greek legislation follows the EU directives about dry and wet leases, as the internal markets have been opened up.
In Greece, there are, also, a lot of Greek leasing companies for those who would like to lease an aircraft for business and cargo services, as well as for entertainment, travelling and V.I.P. charter flights.

What is the scheme followed for ground handling in Greek airports?
The ground handling agreements are freely negotiated, in accordance with the directive 96/67/EU, with which self - handling must be allowed for baggage, ramp, fuel and oil and freight and mail handling at airports with no less than one milion passengers /25.000 tones of freight pa, but may be limited to two or more airport users and other types at all airports. Third parties must be allowed to provide Ground handling services at airports with no less than two milion passengers/50.000 tones of freight pa, but may be limited to two or more or the ‘core’ services.
Before 1998, the International Airport of Athens could only use the ground handling of Olympic Airways, but with the Law 285/1998, in compliance with the aforementioned directive it may use different Ground handling companies, such as Goldair Handling, Swissport and Olympic Handling. Exemptions, of course, are possible, for some of the Greek airports, but the free market for ground handling provides the chance to all companies to be involved.

How is a mortgage registered?
There are two kinds of mortgage in Greek aviation code: the simple one and the preferential one.
In the first kind of mortgage, the mortgagee can enforce the payment of the secured debt through auction of the aircraft or the motor engine, so that his claim will be satisfied by the sale price.
The second kind of mortgage is constituted on the entire aircraft and the mortgagee can in principle enforce the payment of the secured debt by the sale of the aircraft, but the parts may agree that the mortgagee can obtain full operation of the aircraft by the time the debt becomes due.
The aforementioned kinds of mortgage are freely agreed by the parties, but regardless of their differences both must be registered in the Mortgage Registration Book kept in the Hellenic Civil Aviation Authority (C.A.A.).

What is the present tax payable to the Greek government for the acquisition of an aircraft?
As of the 1st of January 2010 (art. 3 of Law 3842/2010, which replaced the art. 16 Law 2238/1994), a tax payer possessing or acquiring an aircraft or helicopter is considered to bear the relevant expenses only after he takes possession or acquires ownership. If the tax payer cannot afford the expense, then the expense is considered to be a revenue, a turnover. The annual expenditure/outlay is objectively calculated solely on the basis of the power of the aircrafts'/helicopters' engine power (art.16 Law 3842/2010) and not – as the case was under the previous legislation – on the basis of the age of the aircrafts. It makes no difference, if the aircraft will stand still (without flying) for a long time. As long as it exists and belongs to someone, the tax has to be paid. The fuel of aircrafts is taxed in accordance with EU rules and the V.A.T. legal framework in Greece.

What are the charges an aircraft has to pay for landing and parking on the International Airport of Athens?
The C.A.A. determines the charges for landing, parking in the airport and the subcharges annually, on the basis of the take out weight of the aircrafts and depending on whether they have a European Union member state certificate of registry or not. The A.I.P. Greece contains all the information needed.

What about the fares and rates?
Community air carriers continue to have freedom to set air fares and cargo rates for intra EU services, extended to third country carriers on the basis of reciprocity; consequently Greek air carriers set their fares and rates according to the implementing regulations, which ensure the transparency of rates and fares required.
Bilateralism in Greece?

Greece follows the global regime about external aviation relations, as it has already officially ratified the Chicago Convention, applies the related principles with regard to the freedoms of the air and has created an open economical environment market access. Bilateral air services agreements have also been signed between the Hellenic Republic and third parties (non EU members), such as: Albania, Algeria, Argentina, Armenia, Australia, Azerbaijan, Bahrain, Bosnia-Herzegovina, Brazil, Burma, Canada, China, Croatia, Cuba, Egypt, Ethiopia, Georgia, Hong Kong, India, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Libya, Macao, Malaysia, Moldova, Morocco, Nigeria, Oman, Pakistan, Philippines, Qatar, Russia, Saudi Arabia, Serbia, Singapore, South Africa, South Korea, Sri Lanka, Syria, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, USA, Uzbekistan, Vietnam, Zaire, Zambia.

What is the contribution of Greece to the environmental protection as far as its Aviation Law is concerned? Is Greece a part of ETS?

Greece is a country with environmental sensibility and, in an effort to contribute to the establishment of an ETS (Emission Trade Scheme), it has transposed the EU directive 2008/101, which amended the directive 2003/87. The Hellenic Republic has also signed the Kyoto Protocol since 1998 and ratified it on the 31st of May 2002.
The key points which will be developed in the present document concern road and rail carriage. A brief reference will be made to the degree of liberalization per specific market, before addressing questions regarding the conclusion and functioning of the contract of transport under private law.

I. ACCESS TO THE INTERNATIONAL & THE GREEK TRANSPORT MARKET

Conditions of access to the transport market are mainly regulated by EU Law, as follows:

The international carriage of goods by road for hire or reward for journeys carried out within the European Union (EU) is governed by Regulation No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market. When the carriage takes place between an EU country and a non-EU country, this regulation applies to the part of the journey on the territory of any EU country crossed in transit. It is not applicable to the part of the journey on the territory of the EU country of loading or unloading. This regulation also applies to the national carriage of goods by road carried out temporarily by a non-resident haulier. International carriage is undertaken subject to possession of a Community licence and, if the driver is a non-EU national, in conjunction with a driver attestation. Cabotage operations may be carried out by any haulier who is a Community licence holder and whose driver, if a non-EU national, holds a driver attestation, but only on a temporary basis, following an incoming international carriage.

Independent (not related to an international carriage) cabotage services may be carried out in Greece by any EU carrier holding a Community authorisation even if such carrier is not based or established in Greece, as provided for in Regulation 3118/1993. In principle, cabotage operations are covered by national legislation in the following areas: the prices and conditions governing the transport contract; standards relating to weights and measures; requirements relating to the carriage of certain categories of goods; driving and rest time for drivers; VAT on transport services. In addition, EU nationals may establish transport companies in Greece and receive authorisation for the operation of national and international transport services, according to the very recent law 3887/2010. According to the 1st art. of the said law, its provisions apply without any discrimination related to the nationality.

Access to the international carriage of passengers by road is governed by Regulation 1073/2009 on common rules for access to the international market for coach and bus services (incorporating previous reg. 684/92 and 12/98). In summary, a carrier is
permitted to carry out regular international carriage services, including special regular services and occasional services by coach and bus, without discrimination on grounds of nationality or place of establishment if (a) he is authorised in the EU country of establishment to undertake carriage by means of regular services in accordance with the market access conditions in national law; (b) he fulfils the conditions within the EU rules on admission to the occupation of road passenger transport operator in national and international transport operations and (c) if he meets the legal requirements relating to EU standards for drivers and vehicles. Cabotage services may be carried out only if they constitute an extension of an international.

**Rail transport market** is regulated by PD 41/2005, 125/2010, 120/2010, 3891/2010. These legal instruments aim at implementing liberalisation as prescribed in EU law. The first PD provides for the creation of a National Manager of the railway infrastructure, the conditions to be fulfilled for the granting of authorisations to railway companies as well as main guidance for the pricing of railway services.

### II. CONTRAST OF CARRIAGE BY ROAD/RAIL:

**What is the meaning of a contract of carriage? How many parties must be involved?**

It is a contract between at least two parties, the carrier and the sender, by which the carrier by profession assumes the responsibility to carry from one place to another, goods of someone else’s property for reward. However, either from the beginning or during the execution of the contract, it is possible for other persons to get involved, such as the consignee, the commissionaire, the agent et al (et alia).

**Which are the applicable rules?**

The applicable rules depend on the international or internal dimension of the carriage. In addition, the provisions of the Greek Civil Code regarding the contact of work (art. 681-402CC) may receive application.

**How is the contract concluded?**

- Regarding domestic/internal carriage by road.
  The contract of carriage by road is concluded without certain form. Thus, it can be concluded even verbally, without it being necessary to issue any document. Obviously, the possibility exists for issuing private documents as a means of proof, such as the consignment note and the bill of lading. The consignment note is a private document issued by the sender or the commissionaire, must bear a date, mention the kind, weight and the quantity of the goods to be carried, as well as the time limit within which the transportation must be executed; it must mention the name and domicile of the commission transportation agent, the name and domicile of the road carrier, the freight as well as any compensation due to delay; it is delivered to the carrier in order to accompany the goods until their final destination (article 101 Commercial Code); The road bill of lading is a commercial paper.
Regarding domestic/internal carriage by rail.
The contract of carriage by rail is equally concluded without certain form. Only the agreement of the parties and the delivery of the goods accompanied by the bill of lading are required; the receipt is certified by the sealing of the bill of lading by the dispatch station; after the sealing, the bill of landing proves the conclusion of the contract of carriage (article 64 Internal Rail Carriage Regulation). The bill of lading which is necessarily nominal in rail transport must contain the indication of the destination station, the first and last name, as well as the address of the receiver, the specification of the nature of the goods and its weight, the first and last name, the address and the signature of the sender.

Regarding international road carriage.
The conclusion and the performance of a contract for the international carriage of goods by road are subject to the provisions of the Geneva International Convention - CMR (1956) The above Convention has been ratified by law n.559/1977.

Regarding international rail carriage.
The conclusion and the performance of a contract for the international carriage of goods by rail are subject to the provisions of the International Convention concerning international carriage by Rail - COTIF/CIM (1980). The above Convention has been ratified by Law 1593/1986.

Which is the legal regime of the combined transport?
Combined is the form of transport executed via two at least different means of transport, but through a single contract. The difference between combined and mixed carriage, is that, in the first case, unloading of the goods from the one vehicle and loading on the other is necessary.

No specific legislation for combined transport exists in Greece. Each segment of the combined transport (for example road and rail carriage), is governed by its own independent and separate regime.

III. DOMESTIC/INTERNAL CARRIAGE BY ROAD

Which legal provisions apply to the domestic/internal carriage of goods by road?
- Articles 95-101 of Greek Commercial Law (on the contract of carriage)
- Articles 102-107 of Greek Commercial Law (regarding liability of land carrier)
- N.3887/2010 (procedure of establishment and operation of transportation companies)

Which are the obligations and rights of the carrier?
The carrier’s obligations cover the whole period of carriage, although they vary according to the concrete stage of the contract’s performance. During the preparation stage of the carriage, his main obligation is to execute the carriage by providing sufficient and appropriate means for it. He is obliged to upload the goods through expenses and risk of his own, unless another agreement exists. During the main stage of the carriage, he is obliged to preserve the goods under carriage, to follow the agreed

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upon itinerary and complete the carriage within a certain time. After the arrival of the goods he is obliged to unload the goods and deliver them to the entitled receiver. He is entitled to collect the freight, including everything already paid by him for any necessary expenditures; in order to guarantee his rights deriving from the carriage contract he is equipped by the right of withholding the goods which constitute the object of the carriage (right of attachment), the right of selling these goods, as well as the right of pledge over them.

**Which are the obligations and rights of the sender?**

The main obligation of the sender is to pay down the freight as well as the necessary expenditures and charges which the carrier has gone through during the execution of the carriage (e.g., taxes, expenses for packaging improvement). There are also additional obligations of the sender or the consignee deriving from article 288 of the Greek civil code, such as delivering the goods under carriage in a packaged condition, filling out the consignment note or the bill of lading when the goods are delivered, delivering to the carrier all the documents necessary for the appropriate execution of the carriage, and, finally, receiving the goods at the place of destination. He is entitled to require from the carrier the execution of the contract as well as the amendment of the said contract (i.e. change of the place at which delivery is to be effectuated).

**What is the carrier’s liability?**

The carrier’s liability is objective, meaning that no fault is required. The carrier is even liable for chance events, meaning events which are connected with the enterprise and the financial activity of the carrier, even if he proves that it was humanly impossible to predict and avoid these events.

In case of a law suit for loss or damage of goods, it is not necessary for the claimant to invoke and prove the existence of carrier’s fault, nor the point in the transportation where the damage took place, or even the cause of the damage since the carrier is liable even if the cause is unknown. The reference that the goods have sustained damage suffices.

**When is the carrier exempted from the liability?**

The carrier is relieved of liability, when the loss or damage arises from:

- superior force,
- inherent defect or the special nature of the good, according to 102 par 2 of Greek Commercial law, insofar as the damage of the good is due exclusively to that cause, without the exercise of any external factor,
- a wrongful act by the sender or the receiver.

**When is the carrier’s liability over?**

The liability of the carrier is over:

- with the complete, real and unreserved receipt of the goods,
following prescription of the relevant claims (6 months, according to article 107 of Greek Commercial Law).

Which are the documents of the carriage contract?
The consignment note.

IV. DOMESTIC/INTERNAL CARRIAGE BY RAIL

Which legal provisions apply to the domestic/internal carriage of goods by road?
Regarding domestic/internal carriage the following provisions apply:
- ministerial decree A-20998/3079 with which the regulation of rail transportation was approved (articles 55-100 Regulation of rail transport),

Which are the documents of the carriage contract?
The bill of lading.

Which are the obligations and rights of the carrier?
The carrier has the obligations of checking the goods, their packaging, the indications on them, of receiving the goods under carriage and sealing the bill of lading given to him by the sender; his main obligation is the delivery of the goods to their entitled receiver at the place of destination. He is entitled to note on the bill of lading his reservations regarding the goods' condition, their packaging, etc.

Which are the obligations and rights of the sender?
The sender is obliged to fill out with accuracy the bill of lading during the delivery of the goods, and to deliver to the carrier all the supporting documents. His main obligation is to pay down the freight and carriage taxes. He has the right to amend the contract of carriage.

What is the carrier’s liability?
The carrier's liability is objective, thus he is liable even in the absence of any fault from his side or from his personnel and his agents. He is liable for every loss, damage or delay in the delivery of the goods taking place from the receipt of the goods until their delivery (article 91 par 1 Regulation of rail transport). That same liability applies for actions and omissions committed by agents and servants during the execution of the carriage.

When is the carrier exempted from the liability?
The carrier is relieved of liability:
- when the loss or damage arises from force majeure,
- if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, or by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier,
- when the loss or damage is due to an inherent defect of the goods,
- when the loss or damage of the goods is due to special hazards.

The burden of proof that the loss was due to one of the above exemptions of liability rests upon the carrier.

When is the carrier’s liability over?

- upon the receipt of the goods by the person entitled.
- following prescription; all claims are prescribed one year after the receipt of the goods. exceptionally, the prescription is extended to two years for the reasons exclusively mentioned in art. 100 par 1 subparagraph b of the relevant Regulation.
INSURANCE
Give a brief overview of the private (re)insurance regulatory framework and identify any trends

State supervision of the Greek private (re)insurance industry is mainly governed by Legislative Decree 400/1970 as amended from time to time in line with EU sector-specific legislation. The above decree governs all primary aspects of the (re)insurance undertakings’ licensing, conduct of business, state supervision, solvency requirements and winding up proceedings. Insurance intermediaries’ conduct of business is governed by Statute 1569/1986 supplemented by Presidential Decree 190/2006 (implementing the Insurance Mediation Directive 2002/92). Greece has further adopted the trend towards horizontal supervision of the financial sector. In this light, the Bank of Greece was appointed as the regulator of the private insurance sector by virtue of Statute 3867/2010 in substitution of the Private Insurance Supervisory Committee. The Greek insurance market is already in the process of implementing procedures to meet the Solvency II requirements and a legislative committee has been formed for the transposition of Directive 2009/138. Other trends relate to the issue of secondary legislation by the Bank of Greece regarding insurers’ internal audit procedures and intermediaries’ code of ethics and certification requirements.

Is non-admitted (re)insurance permitted in Greece?

A license is required for a (re)insurer to undertake primary or reinsurance risks situated in Greece. Said license is granted by the Greek regulator, if the (re)insurer is domiciled in Greece or in a non-EU/EEA country and grants the licensee the right to provide its services in all EU/EEA member states under the FOS/FOE regime. Insurers domiciled or established in other EU/EEA member states can undertake risks situated in Greece by virtue of the single license passport set by the so-called 3rd Non-Life and the Consolidated Life Assurance Directives. EU/EEA domiciled reinsures can also passport in Greece under the single license set by the Reinsurance Directive (transposed by Statute 3746/2009).

What are the consequences of a non-admitted (re)insurer covering risks situated in Greece?

The provision of (re)insurance cover by non-admitted (re)insurers is prohibited and entails penal and administrative sanctions. Any primary policy concluded with a non-admitted insurer is null and void, albeit the insurer cannot plead said nullity against any party concluding the policy in good faith.

What are the requirements for the license of an insurer in Greece?

An insurer domiciled in Greece must be incorporated as a Société Anonyme or a Società Europea. Public entities can undertake insurance risks pursuant to the provisions of
What are the requirements for the license of a reinsurer in Greece? Give a brief overview of the requirements for the establishment of a Greek reinsurance undertaking

A reinsurer domiciled in Greece must be incorporated as a Société Anonyme or (with respect to non-life reinsurance risks) a mutual reinsurance cooperative. The reinsurer’s scope of activities must be restricted to the provision of reinsurance business; however, if a reinsurer is incorporated as a Société Anonyme, it can also be a mixed financial holding company. The reinsurers’ management and key shareholders must be sound and prudent. Non-EU/EEA reinsurers must be licensed, established in Greece and abide by the capital and solvency requirements of Greek reinsurance undertakings. The minimum guarantee fund of a reinsurance undertaking is equal to €3,000,000 or 1/3 of the solvency margin, whichever is higher.

Describe the procedure for the grant of license regarding the conduct of (re)insurance business

The license is granted per class of primary insurance for all or some of the risks of each class and grants the primary insurer the right to provide its services under the FOE or FOS regime within EU/EEA states and Switzerland (with respect to non-life risks pursuant to a bilateral agreement between the EU and Swiss Confederation). An insurer can also undertake reinsurance risks within the scope of its primary insurance license. Primary insurers already operating under a mixed license prior to the entry into force of Presidential Decree 118/1985 can undertake both life and non-life risks provided that they have established a separate administration of their life assurance business. With respect to reinsurance, the license can be granted for both life and non-life reinsurance risks (mixed license) or for one of the two. The licensee can passport in all EU/EEA member states under the FOS/FOE regime.

What are the requirements for the provision of (re)insurance cover by non-Greek (re)insurance undertakings

(Re)insurers already licensed in other EU/EEA member states can passport in Greece under the single EU license (chapter 7 and article 101 of Decree 400/1970). (Re)insurers domiciled in non-EU/EEA countries must be established in Greece. Non-EU/EEA primary insurers who undertake both life and non-life risks can be licensed to provide either non-life or life assurance coverage in Greece pursuant to article 20 of the above Decree via a branch or agency. If Non-EU/EEA primary insurers wish to cover both life and non-life risks in Greece, they must establish a Greek Life Assurance affiliate. Non-EU/EEA (re)insurers must abide by the capital, solvency and prudent management requirements of Greek (re)insurance undertakings.
Give a brief overview of the solvency requirements of (re)insurance undertakings in your country and the consequences of a (re)insurer failing to meet said requirements

The (re)insurance undertaking must conduct its business in a fit and proper manner and comply with the regulatory obligations which have been set to safeguard its soundness. Said obligations are compliant to the provisions of the so-called EU Solvency I legislative framework. In particular, (re)insurance undertakings must form and maintain adequate technical reserves/provisions which must be prudently covered by investments. With respect to primary insurers, said investments must meet the statutory eligibility requirements, especially in terms of safety and profitability. Reinsurers, on the other hand, must abide by the prudent management requirement for investing in assets and securities. (Re)insurance undertakings must also maintain a solvency margin and a guarantee fund to meet their obligations towards the persons (re)insured. If the (re)insurance undertaking fails to meet the above solvency requirements, the regulator may impose administrative sanctions, such as requesting from the (re)insurer to submit a plan for its short-term funding and the re-organization of its business or a financial recovery plan, or freezing the company’s assets or revoking its license and placing it under compulsory winding-up proceedings.

Insurance groups are subject to supplementary supervision. Insurance undertakings which are part of a financial conglomerate are subject to the supplementary supervision pursuant to the provisions of Statute 3455/2006.

Give a brief overview of insurance insolvency winding-up proceedings

The insurance undertaking is placed under compulsory winding-up proceedings, if its license has been revoked on the grounds of failing to abide by solvency requirements or if the regulator has frozeed its assets. The proceedings have immediate effect within all EU/EEA members where the undertaking is established in accordance with the principles of unity and universality set out by the Directive 2001/17. The liquidator which is appointed by Court must notify all persons entitled of insurance money, which domicile in another EU/EEA member state, about the proceedings and how to notify their claims on time. Persons domiciled in Greece are invited to notify their claims and all pertaining evidence by an invitation published in newspapers. Said notification must take place within three months following the above publication. Claims arising from compulsory third party liability insurance are covered by the Auxiliary Fund. Claims arising from life assurance are handled by the Private Insurance Guarantee Fund established by Statute 3867/2010.

Are there any general good requirements regarding the conduct of insurance business in Greece by EU/EEA (re)insurers?

EU/EEA insurers providing their services in Greece (via FOE or FOS) must abide by the provisions of Greek legislation which aim to protect the interests of the persons’ insured/policyholders, including provisions regarding advertising and consumer protection. To this end, the regulator may request from said insurers to amend their advertisements and/or their business practice so that they abide by the above general good requirement. If, despite measures already adopted to this end by its home-country regulator, the EU/EEA (re)insurer’s conduct of business continues to threaten the interests of the Greek public and the systemic stability of the market, the Greek regulator may prohibit it from providing its services in Greece or undertake other appropriate
administrative measures. Other indicative general good requirement imposed on EU/EEA insurers is the mandatory membership and contribution to the Private Life Insurance Guarantee Fund, if the EU/EEA life assurer offering its services in Greece is not already subject to a guarantee scheme in its home member state (article 6 of Statute 3867/2010).

**What constitutes insurance mediation for the purposes of the law and regulation in Greece?**

Insurance mediation is defined by article 2 (3) and (4) of Decree 190/2006 as any activity whether of introducing, proposing or carrying out other work that is preparatory to the conclusion of contracts of (re)insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, particularly in the event of a claim. The above activities shall not fall within the scope of (re)insurance mediation if undertaken by an (re)insurance undertaking or an employee of an (re)insurance undertaking who is acting under the responsibility of said (re)insurance undertaking. The provision of information on an incidental basis shall not constitute insurance mediation if provided in the context of a professional activity other than that of assisting the customer in concluding or performing an insurance contract, or of claims management and of loss adjusting of an insurance undertaking on a professional basis and of expert appraisal of claims.

**Are there different types of insurance intermediaries?**

The various categories of (re)insurance intermediaries are:

- (Re)insurance broker who does not bear any commitment as to his choice of the (re)insurance undertaking.
- (Re)insurance agent who acts in the name and on behalf of one or more (re)insurance undertakings.
- (Re)insurance (formerly defined as sub-broker) who acts as a producing broker and does not have the right to represent a (re)insurance undertaking, broker or agent.
- (Re)insurance coordinator who undertakes insurance mediation on behalf of a (re)insurance undertaking via a group of (re)insurance consultants of his choice whom the coordinator trains and supervises.
- Tied intermediary who acts under the full responsibility of the insurance undertaking he represents.

**What are the prerequisites for the undertaking of insurance mediation business in Greece?**

(Re)insurance mediators must be registered with the Professional Chamber of the prefecture where they have their seat. The application for their registration must be accompanied with the documents evidencing that the applicant has the qualifications required by law. Employees of (re)insurance undertakings can undertake to conduct (re)insurance mediation without having to be registered with the Professional Chamber, if their annual gross income deriving from the provision of (re)insurance mediation does not exceed the amount of €5,000.

A (re)insurance mediator can also provide its services via FOS/FOE to other member states following a notification to the regulator of his intent. EU/EEA (re)insurance mediators can passport in Greece under the single license set by the IMD Directive.
Is there a minimum statutory/regulatory context of an insurance contract?

The insurance contract must specify (article 1 of Statute 2496/1997):

- The details of the contracting parties and the name of the person entitled to receive the insurance money (if a person other than the policyholder).
- The period for which insurance cover is granted
- The insured risks
- The insured sum
- Exceptions to cover
- The premium
- The applicable law
- The unit to which the policy is linked (with respect to unit-linked insurance policies, article 13c of Statute 400/1970)

The insurance contract is exclusively evidenced by a document signed by the insurer (the insurance policy). The insurance policy shall state the basic elements of the insurance contract as well as the date and place of its issue. If the insurance contract is governed by general or special terms and conditions, the policy must also state that said terms and conditions apply to the contract and a copy of the terms must be provided to the policyholder.

Are there any statutory/regulatory requirements aiming at the protection of the policyholder during the conclusion of an insurance contract?

The insurer bears the following notification duties:

- To supply the policyholder with the information required under law prior the conclusion of the contract.
- To inform the policyholder in writing or by an easily legible notice appearing on the first page of the policy of:
  a) any inconsistencies between the application for insurance and the policy.
  b) the policyholder’s rights to object if the policy is inconsistent with the application for insurance or the insurer failed to provide the policyholder with the information required under law or failed to communicate the insurance terms and conditions.
  c) the policyholder’s cooling off rights
- To provide the policyholder with separate printed specimens of the notice of objections and of exercising its cooling-off rights.

A draft bill has been issued by the Ministry of Employment with the purpose of enhancing consumer protection and transparency in relation to the provision of private insurance services, setting out MiFID-oriented rules regarding the promotion of life assurance products.

Can the insurer revoke cover if the policyholder failed to disclose material information prior to the conclusion of the contract?

The insurer can revoke cover if the policyholder intentionally breached his disclosure duties. Negligent breach of said duties entitles the insurer to terminate the contract or request its variation within a period of one month following discovery of said breach. If
the insured event takes place before the termination or the variation of the contract, the insurance money shall be reduced in proportion to the difference between the premium paid and the premium that should have been paid if the breach of duty to disclose had not occurred.

Can a third party file a direct action against the insurer?
A third party (i.e. a person other than the policyholder) can file a direct action if:
(a) it is the person insured in a policy concluded on the account of that third party (article 9 of Statute 2496/1997);
(b) it is a person injured and the insurer has undertaken to provide compulsory third party liability cover of the person liable to compensate the third party (article 26 of Statute 2496/1997). However, with the exception of motor third party liability claims (regulated by codified law 489/1976), this right of direct action is still not in effect, since practical issues must still be determined by means of a ministerial decision regulating which authorities shall be authorized to certify compliance with the requirements of compulsory insurance.

Are there any statutory/regulatory requirements regarding the context of reinsurance policies
Reinsurance contracts are not regulated by law.
GREEK LAW DIGEST

- INSOLVENCY
- BANKRUPTCY
Give a brief overview of the reorganization and insolvency regulation in Greece?

Rescue and insolvency procedures are governed by the Bankruptcy Code (statute 3588/2007). However, the compulsory winding-up proceedings of credit institutions and insurance undertakings are subject to sector-specific legislation. The Bankruptcy Code, as now in force, envisages that a distressed or bankrupt debtor may be subject to the following procedures:

- Rehabilitation process of articles 99 et seq.;
- Post-bankruptcy reorganization process of articles 107 et seq; and
- Post-bankruptcy liquidation process.

Post-bankruptcy proceedings aim to repay creditors and also, if possible, rescue and restructure an insolvent company's business. On the contrary, pre-bankruptcy procedures aim at the reorganization of the debtor's business and its continuation following an agreement with the majority of its creditors. The Bankruptcy Court, which supervises these proceedings, is a three-member court of first instance in the geographical region where the debtor has its key establishment.

What are the conditions for the initiation of insolvency procedures?

Insolvency proceedings apply to merchants, i.e. (a) individuals (but not those who exercise professional activities, such as doctors or lawyers, who cannot be subject to bankruptcy proceedings); (b) companies limited by shares; (c) limited liability companies; (d) general partnerships; and (e) although not typically merchants, associations which pursue economic activities. These merchants need to be domiciled in Greece. This means that a company must have a seat in Greece for the Greek courts to establish jurisdiction over insolvency proceedings. The conditions precedent for the commencement of insolvency proceedings are:

- The debtor is in a state of cessation of payments, i.e. the debtor is permanently unable to pay its overdue debts (or at least the greatest part thereof); and
- The debtor is in a present or foreseeable financial difficulty, i.e. the debtor has cash-flow problems or is about to become permanently unable to pay its future debts as they fall due, but has not reached cessation of payments yet.

Who can initiate insolvency procedures?

If the debtor is in a state of cessation of payments, its bankruptcy can be declared following a petition filed by:

- the debtor itself;
- any of its creditors; and
- in certain circumstances, the public prosecutor on grounds of public interest.
The court may reject the petition on the following grounds:
- The debtor’s assets will not cover the cost of the bankruptcy proceedings; or
- The petition indicates that the applicant has exercised its rights abusively (e.g. the debtor filed the petition to avoid paying its debts).

If the debtor is in financial distress but has not reached the state of cessation of payments, it may opt to:
- file a petition for its declaration as bankrupt; or
- file a petition for the initiation of the rehabilitation process of articles 99 et seq. (i.e. pre-bankruptcy proceedings); or
- file petitions for both its declaration as bankrupt and for the initiation of the rehabilitation process of articles 99 et seq.

Although the rehabilitation process of articles 99 et seq. is a pre-bankruptcy procedure, the debtor who is a state of cessation of payments and therefore eligible to be declared bankrupt, may also opt to file a petition to enter the rehabilitation process. Indeed, if two competing petitions have been filed in respect of the same debtor, one for bankruptcy and one for the rehabilitation process, the court will stay its proceedings for the petition of bankruptcy until the process of articles 99 et seq is (un)successfully terminated.

**How is the rehabilitation process initiated?**

The debtor must file a petition for the initiation of the rehabilitation process before the Bankruptcy Court. If the debtor is a state of cessation of payments, it must also apply for its declaration as bankrupt, albeit its failure to do so does not entail the rejection of its petition for the rehabilitation process.

The Bankruptcy Court must schedule the hearing for the petition within two months and shall initiate the rehabilitation process if it deems that there are credible prospects of the business to be rescued and that the collective interests of the creditors are not adversely affected by the process. Said procedure has an initial duration of four months (as from the date the court decision to open the procedure is issued). However, the chairperson of the Bankruptcy Court may prolong it for another month following a petition of the debtor or for three months following a joint petition of the debtor and the majority of its creditors. The agreement on the debtor’s rehabilitation must be reached within the above timeframe; otherwise, the process is declared as unsuccessfully terminated.

**Who are the bodies involved in the rehabilitation process?**

The bodies involved in the rehabilitation process are:
- The Bankruptcy Court, i.e. the three-member court of first instance in the region where the debtor has its key establishment;
- The expert (financial consultant) who is chosen by the debtor and can be either a credit institution or auditor/auditing firm;
- The mediator appointed by the court to facilitate negotiations between the debtor and its creditors, following a petition filed either by the debtor or its creditor(s) or the financial consultant;
- The administrator (if a person other than the mediator) appointed by the court to undertake specific actions, specifically in relation to the preservation of the debtor’s property and/or the supervision of the execution of the rescue plan agreement.
- The creditors or the creditors’ assembly.
What are the prerequisites for a rehabilitation rescue plan to be officially concluded?
The rehabilitation process is concluded with an agreement reached between the debtor and its creditors following the convocation of the creditors’ assembly. Said assembly is in quorum if attended by creditors representing at least 50% of the debtor’s debts. In order for the assembly to pass a resolution on the acceptance of the rescue agreement a dual threshold is set, i.e. the agreement must be approved:

- by creditors representing 60% of the debts of the participants in the assembly; and
- by creditors representing 40% of the secured debts of the participants in the assembly.

The creditor’s assembly further appoints its representative, who will countersign the agreement with the debtor. However, if the debtor reaches an agreement with creditors representing at least 60% of the debts and 40% of the secured debts, then the agreement is concluded without the convocation of the creditors’ assembly. Following its conclusion, the agreement is ratified by the Bankruptcy Court and is thereafter binding upon all creditors (including non-consenting creditors).

Are there any mechanisms used by debtors to protect their business assets in view of pre-bankruptcy procedures?
A debtor wishing to apply for the initiation of the rehabilitation process of articles 99 et seq. of the Bankruptcy Code may request that the court grants provisional measures which will apply until the ratification of the agreement. The court may thus suspend individual enforcement measures against the debtor’s assets. Said suspension may also be extended to protect the debtor’s guarantors or joint debtors as well. Provisional measures do not, however, cover:

- the termination of lease agreements or the repossession of leased assets, if monthly rents have not been paid for at least a period of six months.

Are there any pre-bankruptcy collective liquidation procedures? If applicable, give a brief description of such procedures.
Statute 4013/2011 has further introduced an accelerated pre-bankruptcy collective liquidation process. Said process is initiated following a petition filed by;

- the debtor itself;
- any of its creditors; and
- in certain circumstances, the public prosecutor on grounds of public interest.

The court will stay its proceedings for the petition of collective liquidation until the process of articles 99 et seq of the Bankruptcy Code is (un)successfully terminated. If the court accepts the petition, it will appoint the liquidator who will undertake the realization of the debtor’s assets and the satisfaction of its creditors from their proceeds.

What are the effects of bankruptcy proceedings?
The declaration of the debtor as bankrupt has the following results:

- all the debtor’s assets form part of the bankrupt estate;
- the debtor can no longer manage its business, unless the court grants it a specific right to do so. The court is highly unlikely to grant this right and will only do so
if the debtor has filed a bankruptcy petition at its own initiative (article 18 of the Bankruptcy Code);

- the court appoints an administrator (syndic) to continue running or liquidate the business;
- all unsecured debts become due and cease accruing interest;
- creditors cannot take individual enforcement measures;
- contracts which are of a personal nature and strictly related to the debtor are terminated; and
- legal entities declared bankrupt are liquidated.

Bankruptcy proceedings end:

- following the liquidation of the bankrupt estate and payment of creditors;
- with a restructuring plan (see below); or
- upon the lapse of time limits set by law [i.e. ten years from when the creditors’ assembly first meets (article 166(3) of the Bankruptcy Code) and 15 years from the declaration of bankruptcy].

The Bankruptcy Code has further introduced an accelerating bankruptcy procedure if the following criteria are cumulatively met:

- the debtor’s assets are valued at less than €100,000; and
- they contain no immovable properties

Are there any post-bankruptcy reorganization procedures? If applicable, give a brief description of such procedure.

A restructuring plan is a bankruptcy procedure (i.e. it presupposes the declaration of the debtor as bankrupt), which aims to help the debtor restore its credibility and viability, and continue its operations beyond bankruptcy. However, there are only a few restructuring agreements recorded due to creditors’ reluctance to consent to them.

A petition with the Bankruptcy Court for a restructuring plan (article 108 of the Bankruptcy Code) may be filed by:

- the debtor, either as part of its bankruptcy petition or as a separate petition, within four months of its declaration as bankrupt; or
- the administrator of a bankrupt estate, within three months of the debtor’s four-month filing window having lapsed.

Once the court approves a restructuring plan, creditors must approve it within three months. Said consent is provided if the plan is approved by creditors representing at least 60% of all the debtor’s debts, including 40% of secured claims. Once creditors have consented to a restructuring plan, the administrator, together with the interested party or parties, present it to the court for approval. Once approved, a restructuring plan has the following effects:

- it binds all secured and unsecured creditors, irrespective of whether they approved it or not;
- bankruptcy proceedings end;
- the debtor can start running the business again, unless the plan provides otherwise (the court may give a third party the right to run the business instead);
- unless the relevant creditor objects, claims against the debtor’s guarantors and joint debtors are reduced in proportion to the debt reduction proposed under the restructuring plan; and
creditors cannot take individual enforcement measures against the debtor.

Where do creditors rank in bankruptcy procedures?
The following priority of payments applies during bankruptcy proceedings (articles 154 et seq. of the Bankruptcy Code):

- Costs incurred in the bankruptcy proceedings.
- Preferential claims, i.e. employment, tax and social security claims.
- Secured claims which give the creditor possession of the relevant asset, i.e. pledges and mortgages (hypothecs).
- Unsecured claims.

Are there any circumstances in which a director, parent company (domestic or foreign) or other party can be held liable for the debts of an insolvent company?
Directors of limited liability companies and companies limited by shares can be liable, together with the company, for any tortious act or omission that took place during their management or representation of the company (article 71 of the Greek Civil Code). In addition, a director can be liable for failing to apply for bankruptcy once the company meets the conditions for bankruptcy (article 98(1) of the Bankruptcy Code). This liability will cover the debt accrued between:

- The date when bankruptcy should have been petitioned.
- The date when bankruptcy was declared.

If a court finds that the directors deliberately or because of gross negligence contributed to a company’s bankruptcy, it can hold the directors liable to indemnify the company’s creditors for the damage the creditors have suffered as a result (article 98(2) of the Greek Civil Code).

A parent company of a general partnership is liable for its subsidiary’s debts and will be declared bankrupt together with the partnership (article 7(4) of the Bankruptcy Code). A parent company of any other type of company cannot be held liable for its debts due to the doctrine of separate legal personality unless the tortious or grossly negligent actions or omissions of the parent company caused the subsidiary’s insolvency. In this case, the directors can also be held liable for these actions or omissions. Such liability can also extend to other persons who influenced the directors in relation to these actions or omissions (article 98 of the Bankruptcy Code).

Shareholders of companies limited by shares can be held liable for company debts in certain circumstances. In particular, if the court establishes that the shareholders used the company’s legal personality abusively to circumvent legal obligations, the court may lift the corporate veil and hold the shareholders liable.

Can transactions that are effected by a company that subsequently becomes insolvent be set aside?
Before the declaration of bankruptcy proceedings on the debtor, with respect to transactions which the debtor has carried out with a third party, creditors can demand to be put back in the position in which they would have been, had a transaction not been carried out, if all the following conditions are met (articles 939 et seq. of the Civil Code):

- The transaction was carried out with the intention of prejudicing creditors.
- The transaction caused the debtor’s insolvency.
The third party beneficiary knew that the transaction was being carried out in order to prejudice creditors. If the transaction was carried out for no consideration, the third party is liable even if it acted in good faith. The transaction can be set aside whether or not it took place within the suspect period.

An administrator may revoke during bankruptcy proceedings transactions which both:

- took place within the suspect period, i.e. the period following the debtor’s cessation of payments.
- are detrimental to creditors

The administrator must revoke the following transactions:

- Donations made by the debtor unless this was given out of social courtesy (for example, a tip) or as part of a moral or legal obligation.
- Payments of debts which are not yet due.
- Payments of due debts by means other than cash.
- The provision of security to formerly existing claims.

Please identify any other important legislative measures adopted?

Greece recently ratified the UNICITRAL Model law on Cross Border Insolvency of 1997 (Statute 3858/2010).
1. Does Greek law include a special regime for individual’s bankruptcy?

Greek law, until recently, had no regime concerning individual’s (non-merchants) bankruptcy. Law 3869/2010, enacted on September 2010, was the first piece of Greek legislation dealing with the issue of over-credited individuals, providing them with the option to achieve an official judicial settlement, concerning the debts they were not able to repay.

2. What is the scope of law 3869/2010?

Law 3869/2010 is applicable in debts (a) of individuals who do not have the legal capacity to get bankrupt (according to merchants bankruptcy law) and (b) have, by no fraudulent intention, permanent inability to pay back their debts.

According to article 1 of law 3869/2010, debts that have been undertaken during the last year before the submission of the discharging application, as well as debts stemming from illegal acts committed by fraudulent intention, administrative fines/sanctions, fines, tax/debts due towards the State and Organisations of Local Authorities, Public law corporate bodies charges and contributions towards social security funds, are excluded from the scope of the provision.

3. Is it possible for a debtor to be discharged by debts more than once?

No. The debtor can be discharged by his debts once only.

4. What is the procedure that has to be followed in order to achieve a settlement or relieve of debts?

According to law 3869/2010, the procedure has three steps:
1. Out of Court Settlement
2. In-Court Compromise
3. Judicial settlement – debts discharge

5. What is the procedure to be followed in Step 1: “Out of Court Settlement”?

The first step of the procedure is an attempt to achieve an out-of-court settlement, with the creditors consent. In practice, the debtor has to submit an application to each creditor of his, proposing a settlement, concerning his debts. This attempt is a prerequisite in order to proceed to the second step of the procedure of law 3869/2010 and has to take place during the last six months before applying for an in-Court settlement (second step). The failure of the out-of-court settlement must be certified in written by the competent authorities, as these are defined in Article 2, or by a lawyer.
If the out-of-court settlement is achieved, the minutes of the settlement are being validated by the competent Magistrate’s Court, and they are considered to have legally binding execution force. According to article 2 par. 4 the Credit Institutions (creditors) must provide the debtor with a detailed statement of the debt, within 5 working days after the submission of an application, free of charges. A fine between 500 and 10,000 € can be imposed on the Credit Institutions which do not comply with the obligations set by article 2.

6. What is the procedure to be followed in Step 2: “In-Court Compromise”?
In the event of failure of the “Out of Court Settlement” the debtor seeking relieve from his debts has to submit a petition to the competent Court, which according to article 3 of law 3869/2010 is the Magistrate’s Court of the debtor residence. The petition must be accompanied by:
   i) a document containing the property and the income status of the debtor and his/her spouse.
   ii) a list of creditors and their claims, divided into capital, interest and expenses.
   iii) a settlement plan, taking into account the special circumstances of the debtor’s assets, property and family situation combined with the creditors’ interests.
Additionally, within one month from the submission of the petition to the competent Court, the debtor must also submit:
   a) the certificate of the failure of the out-of-court settlements signed by competent authorities of article 2 par. 2
   b) a statutory declaration that the property and creditors lists provided by him are true
   c) every relevant document about his property, his/her income status, his creditors and their claims.
If a creditor is not included in the provided list of creditors, his claim is not affected by the whole process.
The hearing for this petition is set obligatorily within 6 months from its submission.

7. How are the creditors aware that the debtor submitted a petition? How can they express their views on the proposed settlement?
The debtor must deliver the petition (by a bailiff) to the creditors within one month from the submission of the petition with a simultaneous invitation to submit to the Court their written remarks declaring if they agree with the proposed settlement plan. The creditors have access to all the documents submitted to the Court by the debtor according to article 4 paragraph 5 (see question 6). Creditors must express -in written- their views on the settlement plan and/or propose modifications within an exclusive term of 2 months (deadline) following the submission of the petition. In practice, this means that if the petition is delivered at the end of the first month, the time of response for the creditors is limited to one month.
The law introduces a presumption according to which if a creditor does not object to the settlement within the abovementioned period, it is assumed that he agrees with the content of the settlement plan.
After the expiration of the 2 months’ deadline, the debtor is able to modify the proposed settlement plan within 15 days in order to achieve an agreement, and the creditors can
express in written their views about the modified plan within 20 days starting from the expiration of the deadline for the submission of the modified plan. The abovementioned presumption applies in this case equivalently.

8. Does the submission of the petition result in suspension of execution measures?
No. According to article 6 the submission of the petition does not, automatically, result in suspension of the execution measures. However the debtor or anybody else having legal interest, can apply for provisional remedies suspending any measures of procedural enforcement against the debtor, or any other provisional remedy in order to avoid any reduction of the value of the debtor’s assets. The suspension is granted until the judgment on the submitted petition is issued; provided that the petition is likely to be successful and that it is probable that the debtor will suffer substantial damage if the suspension is not granted. If a suspension is granted a simultaneous asset disposal prohibition is imposed to the debtor.

9. Do the debts bear interest after the delivery of the petition?
Not secured, with collaterals, claims do not bear interest after the delivery of the petition to the creditor, while secured with collaterals claims still bear contractual interest of non-delinquent debts, until the issuance of the judgment on the petition.

10. How can an in-Court compromise be achieved?
Case I: If all the creditors agree with the proposed plan or if none of the creditors object to the proposed plan within the deadlines described in question 7, it is assumed that the settlement plan was accepted and it is validated by the competent Court.
Case II: If creditors representing more than ½ of the total amount of debts, including all secured creditors and at least ½ of labour claims, agree with the settlement plan, the Court may substitute the consent of the rest of creditors who disagree and accept that a compromise and settlement has occurred.
The above substitution of the creditors’ consent is not allowed and the compromise is not validated when;
i) the claim of the creditor who objects is not satisfied to the same extent as that of others, or
ii) if the objecting creditor proves that had the procedure went on to the third stage of judicial settlement and debt discharge it would recover a higher amount of the debt or
iii) if the claim of the objecting creditor is contested by the debtor or by any other creditor.
The claim of an unsecured creditor which is not included in the settlement plan is written off in case the creditors did not express their views on the proposed plan within the deadline of 2 months after the submission of the petition, provided that the petition was delivered to them.

11. Is it possible for the creditors to charge the debtor with judicial expenses for the procedure of the achievement of the in Court compromise?
No. The creditors cannot claim any amount for judicial expenses for this procedure.
12. What is the procedure to be followed in Step 3: “Judicial Settlement”?

If the settlement plan is not accepted by the creditors, or the requirements for the substitution of consent of the creditors who do not agree are not met, the procedures for the judicial debt discharge are activated. In that case the Court after examining whether the criteria of the law are met, it proceeds with issuing its ruling on the petition. If a debtor’s petition is rejected a new petition cannot be submitted before one year.

13. What happens if the debtor’s income/property are insufficient to cover the debt?

If the Court rules that the debtor’s property and income are inadequate after taking into consideration the spousal contribution, in conjunction with the personal circumstances of the debtors and his family, it will identify a specified amount that the debtor has to pay, on a monthly basis for a period of 4 years directly to his creditors (except if the Court rules otherwise). In that case all the creditors are ranked pari passu. In exceptional cases (e.g. permanent unemployment or severe health problems of the debtor), the Court can define very low monthly or zero amount payments. In that case the Court can set a new hearing (not within the next 5 months) in order to modify the monthly payment plan. The judgment is directly enforceable, and no suspension can be granted. In addition no judicial expenses can be claimed. The amount of settlement may be modified by new Court ruling, in the event of subsequent facts or changes in the debtor’s property or income status.

14. Does the debtor have any additional obligations during the settlement period?

During the period of the settlement the debtor is obliged to work or, at least, to make reasonable effort to find an appropriate position. Moreover he is obliged to inform the Court about any changes concerning his address, his employer and any substantial improvement of his income or his assets.

15. Does the debtor’s property have to be liquidated? Are there any exceptions?

If the Court rules that liquidation of the property of the debtor is required, it proceeds with the appointment of a liquidator. Secured creditors are satisfied according to their privilege from the product of the liquidation. However, it is possible for the debtor to submit a liquidation proposal requesting the exemption of its main residence from the property under liquidation, provided that the main residence does not exceed the size set by the tax laws for the acquisition of first residence +50%. In such a case the Court proceeds to the settlement of the debt, ruling that the debtor has to repay a total amount of 85% of the market value of the main residence, as this value is estimated by the Court. Under such circumstances the debtor can enjoy a grace period, and the payable interest cannot exceed that of current (not denounced) loans, with no compound interest. The duration of the settlement cannot exceed a period of 20 years and secured creditors are satisfied according to their privilege from the debtor’s payments.
The protective provisions for the debtor’s main residence apply equivalently, in case of the only property -that can be used as a residence- of a debtor who lives in another property (belonging to a third party), provided that his/her spouse has no property. If the debtor does not follow the repayment schedule set by the Court, the creditor whose claim is not repaid can proceed to the liquidation of the debtor’s main residence. However, the creditor cannot proceed before the debtor fails to pay at least four monthly installments.

The debtor has the duty to provide the creditors and the Court with accurate information on his property and income status. Creditors are allowed to have access to the data pertaining to the economic status and the current income of the debtor.

17. Can the debtor be discharged of the remaining debts after complying with the 4 years repayment schedule?
Yes. Subject to the provisions concerning the liquidation of debtor’s property (see question 15), the debtor is discharged of the remaining debt, if he complies with the Court’s ruling. In case the debtor delays any payment for more than three months or is frequently in delay, the Court, on request of any creditor, may declare his defeasance from the settlement. In case of non compliance of the debtor with the terms of the Court decision, the creditors’ claims are established again to the amount they were before the discharge (as if the discharge petition has never been submitted to the court).

18. Are the guarantors discharged?
Notwithstanding the fact that the discharge process run by the debtor does not relieve the guarantors of the debt, the guarantors can take advance of the provisions of law 3869/2010, independently. However, the guarantors can not avail themselves by the debt discharge process of law 3869/2010 if the Court is satisfied that the guarantor’s intention, when giving his guarantee, was to make profit out of this activity.

19. How are the submitted petitions archived?
All submitted petitions will be archived in the Secretariat of every Magistrate’s Court. A general Archive with the names of all debtors having submitted a petition and the results of all these petitions will be kept in the Athens Magistrate’s Court, with data from all the country.

20. How long are the Credit Institutions allowed to keep data?
The maximum period that Credit Institution or third persons are allowed to keep data concerning the procedures of law 3869/2010 is 3 years, after the discharge of the debtor according to article 11 (see question 17).
21. Are there any benefits for the Credit Institutions?
   In case of deletion of credit institutions’ claims, under the provisions of law 3869/2010, the amounts deleted decrease the taxable income of the credit institution, acting as tax benefit for them.

22. Are there any legal remedies available against Judgments of the competent Court?
   The Judgments of the competent Court are subject to appeal and cassation, according to article 560 of the Greek Civil Procedure Code.
TOURISM
What is the licensing procedure for the establishment of hotels?
The procedure that needs to be followed for the issue of a hotel license in Greece includes six stages:

- issue of a preliminary environmental approval. This approval is required only for territories outside town planning zones and is issued by the Regional Directorates of Urban Planning, unless another authority is competent, depending on the area where the hotel will be established;
- approval of the suitability of the plot where the hotel will be built which is issued by the Regional Directorates for Tourism;
- approval of environmental terms. Depending on the location and size of the hotel, said approval is issued by either the Regional Environmental Authorities or the Prefecture of Athens or Thessaloniki, or the Regional Directorate of Environment or the Prefectural Office of Environment;
- approval of the architectural designs by the Regional Directorates of Tourism;
- approval of the architectural designs by the Regional Directorates of Tourism;
- issue of a building permit by the Directorate of Urban Planning of the Prefecture or Municipality where the hotel will be located; and
- issue of the operation license by the Regional Directorates of Tourism of the Hellenic Tourism Organization (EOT).

What is the licensing procedure for the establishment of conference centers?
In order for a conference center to obtain a license, the following procedure needs to be followed:

- a study on the purpose of establishment of the conference center must be approved by the competent Directorate of EOT;
- approval of the suitability of the plot by the competent authority of EOT; with said approval EOT may require documents and approvals from various authorities (e.g. approval from the Ministry of Culture and Tourism, an opinion form the antiquities authorities etc.);
- approval of architectural designs by the Regional Directorate of Tourism;
- issue of a building permit by the competent Urban Planning Authority;
- issue of all other relevant urban planning and environmental permits/authorisations/approvals set out in urban planning and environmental legislation;
- a study, approved by the competent Urban Planning Office, with regard to the sound-proof/sound-protection and the acoustics of the room(s) must be submitted with EOT;
the procedure for the establishment of a conference center is completed once the operation license is issued by EOT.

What is the licensing procedure for the establishment of golf courses?

The following procedure must be followed for the establishment of a golf course:

- approval of the suitability of the plot by the competent authority of EOT. Together with the application for said approval, a pre-approval regarding the location of the golf course and an approval of the environmental impact study by the Ministry of Environment must be submitted;
- approval of an architectural study by EOT in relation to which the procedure followed for hotels is applicable;
- issue of a building permit by the competent Urban Planning Authority;
- issue of an operation license by EOT.

What are the technical compliance standards that govern hotels regarding fire safety?

The key provisions on fire protection and fire safety standards are prescribed in Presidential Decree 71/1988 “Regulation on the Fire Protection of Buildings” (Fire Regulation), as interpreted by Ordinance No 39112 F.701.2/12.10.1998 of the Fire Brigade Headquarters “On Codification of Clarifying Ordinances issued by the Fire Brigade Headquarters on the Application of Presidential Decree 71/1988” and various other Ordinances of the Fire Brigade Headquarters, as in force. Before the Fire Regulation entered into force, the fire protection of hotels was regulated by Ordinance 2/1979 of the Fire Brigade Headquarters “On the basic measures of fire protection in hotels”, which may still be applicable on hotels which have received their fire certificate under this Ordinance.

According to the Fire Regulation, as amended and in force, hotels are divided into the following two categories:

- “New Hotels”, i.e. hotels whose building permit was issued after 24.10.2006, and
- “Existing Hotels”, i.e. hotels which had already been constructed or had been in operation by 24.10.2006.

The Fire Regulation’s provisions refer to the following issues:

- escape routes in case of fire, i.e. stairways and emergency exits;
- passive fire protection, i.e. the terms of structural formation of a building which may ensure its fire protection by preventing either the beginning or the spreading of fire in the building; for instance, the fire resistance index of structural material of the building, the division of a building into fire departments etc;
- active fire protection, i.e. the measures to be taken by the hotel against fire; for instance, fire alarm systems, fire-detection systems, fire-extinguishing systems;
- various other measures such as the training of employees to react accordingly in case of fire, the hanging of signs showing the ground plan of the hotel and/or information on the orientation of the building etc.

The Fire Regulation includes similar rules also for shops, meeting rooms and parking areas which are located within hotels. A Certificate of Fire Protection must be issued by the competent Department of the Fire Brigade. Although this Certificate is necessary for the operation of all hotels, different provisions may be applicable for New and Existing Hotels.
What is the nature of allotment contracts? What are the main rights and obligations of the contracting parties?

Decision 503007/29.11.1976 of the General Registrar of EOT (Contracts Regulation) regulates the relationships between (a) hoteliers and individual clients and (b) hoteliers and travel agents. The Contracts Regulation has been formally ratified by article 8 of statute 1652/1986. According to article 5 of said statute, any issue regarding allotment contracts that is not specifically set out in the Contracts Regulation, is governed by the general provisions of the Greek Civil Code. Allotment contracts, i.e. contracts entered into between hoteliers and travel agents or groups for the booking of a number of beds for a specific period, must at least contain the following provisions:

- the agreed price for an overnight stay, the price for a bed & breakfast (BB) stay, the price for a half-board (HB) stay and the price for an all-inclusive (AI) stay;
- the type of rooms (single, twin etc.), the exact duration of the allotment and the agreed maximum and minimum allotment for every month;
- the agreed breakfasts and double-dot meals must be offered at a price and according to the standards of the applicable market rules;
- hotels within the premises of which no restaurants or canteens operate may not conclude allotment contracts on a BB, HB or AI basis;
- restaurants and canteens within the hotel's premises may not be leased or subleased to persons other than those running the hotel business meaning that the responsibility for the operation of the business must cover all departments of the hotel unit.

The hotelier may request a down-payment of 25% of the entire amount payable by the counterparty on the basis of the allotment contract. In case the hotelier breaches the agreement, he/she/it is under an obligation to immediately refund the down-payment plus interest. Such breach of the hotelier may also result in administrative penalties being imposed on him/her/it by EOT. In case the travel agent does not cover the minimum allotment in a month, the hotelier is entitled to compensation which is calculated on the basis of the agreed price for a one-night stay and amounts to half of the minimum uncovered balance of the allotment.

With regard to cancellations, a travel agent may cancel part or all of the agreed allotment without bearing an obligation to compensate the hotelier if the hotelier is notified of such cancellation at least 21 days prior to the agreed arrival of the guests (release period). Nonetheless, with its decision 38/1997 the Supreme Court has ruled that in case the travel agency does not cover the minimum allotment, it must compensate the hotelier for half of the minimum uncovered balance of the allotment, regardless of whether it has notified the hotelier 21 days prior to the agreed arrival of the guests. The hotelier also has the right to be released 21 days prior to the agreed arrival in relation to bookings for which he/she/it has received no confirmation by either a voucher or a rooming list. If the travel agent makes use of its cancellation right, pursuant to the above, during the low season, the hotelier has the right to proportionally limit the allotment of beds during the high season without, nonetheless, falling below the minimum allotment of the relevant month.
What is the nature of guarantee (commitment) contracts?
The Contracts Regulation applies not only to allotment contracts but also to guarantee (commitment) contracts. The main difference between allotment and commitment contracts is that in the case of commitment contracts the agreement refers to a specific number of beds during a specific time period, i.e. it does not provide for a maximum and minimum number of beds. In the case of commitment contracts, if the travel agent cancels the agreement for part or all of the agreed beds, it has to pay the price for all the beds it has booked, unless it has notified the hotelier 21 days prior to the arrival of the guests (release period).

What is the nature of time-sharing contracts?
Time-sharing contracts are regulated by statute 1652/1986 “Leasing agreements and regulation of relevant issues”, as it has been modified by Presidential Decrees 182/1999 and 293/2001. In the case of time-sharing contracts, the lessor undertakes the obligation to supply the lessee with the use of the accommodation for a specific period every year together with certain relevant services and the lessee undertakes to pay the agreed rent. Time-sharing contracts include elements of several types of contracts, although those of a leasing agreement prevail. This is the reason why statute 1652/1986 provides that the articles of the Civil Code regulating leasing agreements are applicable in addition to the provisions of the statute. Time-sharing contracts may have a duration of between 3 and 60 years and must be concluded with a notarial deed which must subsequently be registered with the competent land registry. The observation of such formalities aims at protecting both the lessee and third parties who can thus gain knowledge of the long-term restrictions of such properties.

What is the legal framework of package travels?
Package travels are regulated by Presidential Decree 339/1996 “On package travel, in compliance with Directive 90/1314/EEC on package travel, package holidays and package tours”. The aim of the Directive was to harmonize national legislations on package travels with regard to consumer protection. Whilst Directive 90/1314/EEC regulates the content, execution and termination of a package travel contract, it does not regulate civil liability issues that may arise thereof, for which the legislation of member states must provide. The regulation of package travel contracts by Decree 339/1996 is only fragmentary due to the fact that it almost immutably transfers the rules of Directive 90/314/EEC into the Greek legal framework, without addressing the issues that are not regulated by said directive. Thus, in order to cover legislative gaps (e.g. contractual liability) certain provisions of the Greek Civil Code are applied.

How are (a) hotels and (b) rented rooms and rented furnished apartments categorized?
Presidential Decree 43/2002 “On the classification of the main hotel accommodations according to a star rating system and relevant technical provisions” introduces a new system of classification, according to which main hotel accommodations are divided into the following categories: (a) ordinary hotels, (b) motels, (c) furnished apartments and (d) mixed type-hotels. There exist five star categories in total; hotels are ranked based on a system of compulsory standards and graded criteria. Decree 43/2002 includes rules for...
both technical and functional standards so that consumers may identify the quality of both the accommodation and the available services. According to Presidential Decree 337/2000 “On the classification of rented rooms and rented furnished apartments according to a keys system” there exist four categories according to which rented rooms and rented furnished apartments are ranked. The ranking criteria are divided into the following categories: (a) the minimum compulsory requirements regarding equipment and services for the keys-categories, (b) the minimum compulsory requirements for every key-category and (c) ranked criteria.

What is the employment status of hotel employees?

The employment regime of employees at hotels that operate for a period of up to 9 months annually (seasonal hotels) is regulated by special provisions, those being:

- Article 8 of Statute 1346/1983;
- The collective labor agreements for all hotel employees;
- The codification of provisions applicable for all hotel employees; and
- Statute 2112/1920 on the termination of employment contracts of employees in the private sector.

The employment contract of hotel employees is a “peculiar” contract of fixed duration. Its “peculiarity” lies in the fact that, contrary to regular fixed duration contracts, the employee has the right to be rehired and the employer is under an obligation to rehire the employee provided that the latter follows the procedure prescribed by law [i.e. gives notice to the employer by the 30th of January by email, registered mail or fax that he/she wishes to be rehired (even oral notice may be considered valid if it is standard practice)]. Moreover, the employer is under an obligation to employ the same number of employees and, more specifically, the same employees that he employed during the last period of operation of the hotel. Rehiring must take place gradually as follows:

- Upon reaching 20% of hotel occupancy, 1/3 of the employees must be rehired;
- Upon reaching 50% of hotel occupancy, at least 2/3 of the employees must be rehired;
- Upon reaching 80% of hotel occupancy, the total number of employees must be rehired.

With regard to the end date by which all employees must be rehired, this varies depending on the location of the hotel.

With regard to severance payment, it has been under dispute whether the “dead period”, i.e. the period during which the hotel is closed, should be taken into account when calculating the amount of the severance payment. This matter has been dealt with frequently by the Supreme Court, the most recent occasion being decision 305/2011, which ruled that the “dead period” should not be taken into consideration when calculating severance payment of hotel employees.

How does the new incentives law 3908/2011 apply to hotels? Under which conditions can the establishment/expansion/renovation of a hotel fall under the provisions of the above statute?

Statute 3908/2011 (“On the Support of Private Investments to promote Economic Growth, Entrepreneurship and Regional Cohesion”) aims at enhancing economic growth in Greece by supporting investment plans of new and existing businesses. According to
said statute, three types of support are available, namely tax exemption, state grant and subsidization of leasing contracts. With regard to hotels, only certain types of investment plans may be considered eligible to come under the provisions of the incentives law:

- those which relate to the establishment, expansion or renovation of an integrated hotel unit categorized as at least a three-star hotel or one to be upgraded to an at least three-star hotel;
- investments related to health tourism;
- investments relating to the conversion of traditional or national heritage buildings to hotel facilities of a category of at least three-stars;
- investments regarding the renovation of hotel facilities that operate within traditional or national heritage buildings.

In order for an investment plan relating to the establishment or expansion of a hotel unit to come under the provisions of the incentives law, the applicant must either own the property or have leased it for a period of at least 15 years. Said lease agreement must be registered with the competent land registry. The law does not make reference to renovation of hotel units; as a result, such registration does not apply to renovation works.
What does the Reuse of Public Sector Information (PSI) Legislative Framework comprise of?

The Reuse of Public Sector Information Legislative Framework comprises of a set of laws implementing EU Directives aiming at the reuse of different types of public sector information and increasing transparency in the activities of the public sector authorities. The PSI Legislative Framework consists of the following laws:

- Law 2690/1999 (access to public documents)
- Law 3422/2005 (access and reuse of environmental information) – ratifying the Aarhus Convention
- Law 3861/2010 (transparency law)
- Law 3979/2011 (e-government law)

Why is the PSI legislative framework important for investments in Greece?

The PSI legislative framework provides the investor with a set of legal tools necessary for the obtaining information necessary for assessing the potentials of making an investment in Greece. More specifically:

- most of the information necessary for the use of land as well as key infrastructural elements such as road, rail or power networks may be obtained through the geospatial data infrastructure established through Laws 3422/2005 and 3882/2010.
- access to all public sector documents is regulated by Laws 2690/1999 and 3979/2011 (via e-services)
- Law 3861/2010 ensures that all public sector authorities publish their decision over the Internet in order to be valid. These decisions are archived and are accessible through an open Application Programming Interface. The decision include all public procurement calls.

1. An application programming interface (API) is a source code based specification intended to be used as an interface by software components to communicate with each other. An API may include specifications for routines, data structures, object classes, and variables.
Laws 3422/2005, 3448/2006, 3882/2010 and 3979/2011 stipulate that all public sector information, including geospatial and environmental information is accessible at a cost as close to marginal costs as possible allowing the commercial re-use of PSI and the development of value added information services.

Is the PSI legislative framework a mere implementation of the PSI and INSPIRE Directives and the Aarhus Convention?
No. While the Greek PSI legislative framework implements the relevant Directives it also introduces a number of provisions aiming at specific issues related to the Greek public sector, particularly in relation to the procurement of public sector information and its sharing between public sector authorities. The PSI legislative framework has not been designed as a comprehensive set of laws but operates as a coherent group of laws that serve the same set of objectives, namely increasing transparency in the actions of public authorities and maximising the societal and economic benefits from the use of public sector information.

What is the difference between access to and reuse of public sector information?
The legislation allowing access to PSI aims at increasing transparency in the operation of the public administration whereas the legislation focusing on reuse of PSI aims at increasing commercial activity and stimulating growth. Because of the difference in the objectives of the two legal instruments access to PSI laws only allow use by the individual that have requested the relevant information and normally not for commercial purposes. The reuse of PSI laws, on the other hand, aim at the commercial reuse of the information, the creation of new jobs and value added services. In the Greek PSI legislative framework:

- Laws 2690/1999 and 3861/2010 aim at providing access to information.
- Laws 3448/2010 and 3882/2010 aim at reuse of PSI.
- Laws 3422/2005 and 3979/2011 contain provisions covering both access to information and reuse of public sector information.

What is the meaning Public Sector Information?
The Greek PSI legislative framework makes reference to Information, Documents and Data. The term Document that is found in all related laws is all encompassing including all forms of information and data. In Law 3979/2011 the term Document is also used in its strict sense to express the actual material carrier or the document as an assembly of information that is issued by a public body. In the broad sense a Document includes written texts, databases, audio files and film fragments. Law 3979/2011 also makes reference to the procurement of software by public sector authorities.

What is the scope of the PSI legislative framework?
The PSI legislative framework applies to all Public Sector authorities as defined in the public procurement and transparency laws. This means central and general government, local and regional government, all public authorities, and legal persons that are over 50% owned by public authorities. Following the PSI Directive, the PSI legislation does not apply to the educational, scientific, broadcasting and cultural sectors.
Do public authorities have to actively create and publish PSI?
Most of the Greek PSI Laws are based on an information pull rather than information push model, i.e. there is no general obligation of the public authorities to publish information, though the model has become a more hybrid one with laws 3422/2005 and 3861/2010. More specifically:

- Laws 2690/1999, 3448/2010, 3882/2010 and 3979/2011 do not include any obligations of the public authorities to create and actively publish information; they contain only obligations to provide information after relevant requests are made.
- Law 3861/2010 forces all public authorities to publish all their decisions on the Internet and get a special publication number, else these decisions are not legally binding.
- Law 3422/2005 contains specific publication obligations with regards to environmental information.

What are the main features of the Laws comprising the Greek PSI legislative framework?
The Greek PSI legislative framework contains provisions covering the following issues:

- public procurement of PSI
- procedures to deal with PSI access and reuse requests
- provisions governing the availability of PSI
- charging for PSI
- sharing of information, software and infrastructures between public sector authorities
- transparency of the PSI release conditions
- non-discrimination, non-exclusive agreements and cross-subsidisation
- licensing

How is Public Procurement of PSI and software regulated?
The PSI legislative framework, and specifically laws 3882/2010 on geospatial information and 3979/2011 on e-government, approach the public sector as a single entity which should not procure or produce and pay the same PSI or software twice. In order to achieve this objective it sets a series of measures ensuring that

- there are registries for different data sets, software and their respective licences documenting what is owned by public authorities
- these registries are consulted before any PSI or software is procured
- there are repositories at least in three places (the national stationary office, the national documentation center and the national geospatial information portal) where important data sets and information is stored
- once new PSI or software is procured, the relevant registries are updated
all Greek funding agencies managing EU co-funded project require that a search for the existence of PSI or software is performed before new funding is made available to a public authority.

How should PSI be made available?
PSI laws stipulate that the documents should be made available for re-use in all formats and languages in which the information exists. Law 3979/2011 adds that PSI should also be made available in open formats and through open standards. This only applies in cases where PSI is made available by electronic means. The availability of PSI is further supported through the obligatory provisions of certain sets of meta-data such as in the case of geospatial data as stipulated in Law 3882/2010 or in accordance with standards, such as in the case of European metadata.2 Finally, portals and catalogues are used in order to make such data available as in the case of the National Geodata Portal or the National Documentation and National Stationary Office Portals.

Is there a charging ceiling for PSI made available by public authorities?
Yes. These standards are set in laws 3448/2006 and 3882/2010. For general PSI the charges should not exceed the costs of reproduction and the costs of operation of the service in addition to any costs for the recuperation of the investment made by the public authority. For geospatial data:
- if they are shared between public sector authorities the maximum charge should not exceed marginal costs of reproduction
- if the data are made available to third parties, i.e. any persons other than public authorities the charge should not exceed the ceiling set for general PSI.
In all PSI the level of charges is set by Ministerial Decree, but in the case of geospatial data a coherent charging policy is set for the entirety of the public administration through the national geospatial data policy.

What are the PSI regulatory authorities?
In terms of generic PSI, the ministry of interior is responsible for the application of the law. In terms of the transparency legislation members from the public authorities are appointed in working groups responsible for the publication of the decisions of public sector authorities on the Internet. In the case of geospatial data, the governance mechanism includes working groups called “nodal points of contact” that are responsible for the overseeing of the operation of different authorities in a ministry or regional or local government. These are further overseen by the National Cadastral Organisation (OKXE), whereas the policy decisions (including licensing and pricing) are taken by the national council of geospatial data that is presided by the minister of environment.

2. Adherence to the metadata standards is stipulated through soft norm schemes such as in the case of the Operational Programme Digital Convergence, where funding for cultural sector programs is conditioned upon making use of the Europeana metadata specifications.
**What are the key licensing provisions with regards to PSI?**

The objective of the PSI legislative framework is to make PSI available at the minimum possible cost and with the minimum possible restrictions. The licences, hence, should follow the same approach. More specifically:

- with regards to generic PSI information the licences are set through Ministerial Decrees by the competent ministers. The terms should include minimum restrictions such as attribution of the source of the material, non endorsement of the licensee and in some cases other specific restrictions such as sharing derivative works under the same terms and conditions or not making any derivative works at all.

- with regards to geospatial information, it depends whether the data are shared between public authorities or are made available to third parties:
  - if they are shared between public authorities there should not be any charging or restrictions that limit the sharing or reuse of the information.
  - if they are granted to third parties, charging is allowed but the data also have to be made available without restrictions on the basis of the level of service provided to the third parties.

- Law 3979/2011 stipulates that all public information made available through the web sites of public authorities should be made available with no legal or technical restrictions. In addition, specifically for the local authorities, it is stipulated that content should be made available under the Greek version of the Creative Commons Attribution ShareAlike licence and meta data under the Greek version of the Creative Commons Attribution licence.

- all decision being released under Law 3861/2010 are made available under the Greek version of the Creative Commons Attribution licence

**Are there any Free/ Open Source Software (F/OSS) specific provisions in the Greek PSI legislative framework?**

While F/OSS is not explicitly mentioned in the Greek PSI legislative framework, Law 3979/2011 contains specific provisions with regards to the procurement of software that is originally built for the public sector that coincide with the main principles of F/OSS. Thus, for all new software developed for the public sector, the public authorities should enjoy the following freedoms:

- the freedom to run the program, for any purpose (freedom 0).
- the freedom to study how the program works, and change it so it does your computing as you wish (freedom 1). Access to the source code is a precondition for this.
- the freedom to redistribute copies so you can help your neighbor (freedom 2).
- the freedom to distribute copies of your modified versions to others (freedom 3). By doing this you can give the whole community a chance to benefit from your changes. Access to the source code is a precondition for this.
Are there any limitations as to the commercial use of PSI?
Not necessarily. The law does not differentiate in terms of commercial or non-commercial use of the PSI but rather on the level of service provided to the end user. According to the level of service or quality of the data charges may apply.
What is the general legal framework applied in Greece related to electronic communications?

**General**

Greece is following the EU legal framework implementing its primary legislation from the EU Framework consisted of the EC Directives 19, 20, 21, 22, 58 and 77 of 2002, Directive 24/2006 (amending D. 58/2002) and Regulation (EC) 1211/2009. The Implementation of the new rules published on 18 December 2009 (Directive 136 and 140 of 2009) that were to be transposed into the Member States’ national laws by 25 May 2011 is expected in the following months.


Electronic Communications market is supervised by three independent watchdogs, the telecommunications NRA (E.E.T.T.), the data protection authority (D.P.A.) and the privacy authority (A.D.A.E.). Lately also the Greek National Council for Radio and Television (NCRTV) has played a crucial role regarding Market 18, i.e. the Broadcasting Transmission Services. There is a lot of discussion lately regarding a possible merge of one or more of all these independent authorities, since it seems that their functions are overlapping in many cases, creating some regulatory confusion.

**More detailed secondary legislation applies regarding specific issues:**

Local Loop Unbundling is regulated by Regulation No 2887/2000 of the European Parliament and Law 3431/2006 that provides for the obligation of with Significant Market Power to provide Fully Unbundled Access to the Local Loop to new entrant enterprises in this particular field of activity, under the same terms, with the same quality and at the same timeframes as those applicable to them. EETT has adopted several RUOs regarding LLU costs and regulations and has imposed heavy fines on the incumbent operator for delays in LLU.

Antennas’ construction is regulated by Laws 3431/2006 and 2801/2000 and EETT Regulation 406/22/2006. For the licensing and construction of an antenna (or base station) the operator needs to have a valid lease agreement for the use of the plot or the building, an approved environmental study, an approval by the Atomic Energy Committee (EEAE) and a license for the construction and authorization to use the specific part of the available spectrum issued by the EETT. The local planning authority
approval is not a prerequisite but still an essential since its absence obliges EETT to revoke its license. In practice, due to the heavy bureaucracy implemented, EETT when it founds that an antenna has not got all the necessary licenses and approvals (except the frequency license and the EEAE approval) is imposing a small fine and give some time to the operator to complete the licensing procedures.

**Trespassing rights** have been always a really headache for the operators since it implements discussions and negotiations with local authorities. For that reason in 2007 an art. 69A was inserted to basic Law 3431/2006 in order to set particular steps and impose specific obligations and time frames for granting trespassing rights. The article imposes also transparency and limits on the relevant costs in order to provide a clear and sufficient regulatory environment for the network deployment.

**Interconnection and Leased Lines:** All existing operators in Greece with an SMP in their outbound traffic are obliged to offer interconnection to any other operator demands so. The incumbent operator as well with the three mobile operators is required to have also reference offers approved by the EETT. OTE (the incumbent operator) is heavily regulated also on the leased lines rental both in circuits and half circuits.

How easy is to start offering electronic communication services in Greece?

Actually it is very easy, especially when it does not implement the use of scarce sources, such as reserved spectrum. General Authorizations are required for the engagement in all kinds of electronic communication activities related to electronic communication networks or/and services, according to Law 3431/2006 and the “Regulation on General Authorizations” (EETT Decision no 390/3/31-6-06). In fact anyone (aiming to provide public communication networks or publicly available electronic communication services, as well as persons operating special radio networks) has to complete and submit to E.E.T.T. a Registration Declaration for Engaging in Electronic Communication Activities under a General Authorization Regime. Usually this registration is a simple procedure and it needs an appointed proxy in Greece for contact purposes. For extra-EU persons or entities a representative within the EU is also needed.

This Declaration is required also for the provision of electronic communication services through the infrastructure of other operators and where the relevant activity requires also the use of numbers or frequencies, the operator shall have to prior secure the required rights of use.

The necessary legal documents submitted with the Registration Declaration, for Legal Entities residing in a European Union member-state, are the following:

- Legal documents proving the incorporation of the foreign legal entity and the appointment of its representatives, accompanied by a Hague Apostille and an attached official translation thereof in Greece.

- Legal documents proving the appointment of a proxy in Greece and a legal binding statement made by the said proxy that he/she has accepted his/her obligations. The proxy shall be a permanent resident of Greece and shall speak the Greek language.

- A copy of the attorney or proxy’s Police ID Card or passport.
Those operating under a General Authorization regime shall pay a Declaration submission Fee (now equals to 300 euros) as administrative fees and an annual administrative fee, calculated as a percentage of the total gross income derived from the provision of public communication networks or publicly available electronic communication services under a General Authorization regime as follows:

<table>
<thead>
<tr>
<th>Zone of total annual income (E) in EURO million</th>
<th>Administrative fee factor per zone</th>
</tr>
</thead>
<tbody>
<tr>
<td>E ≤ 0.15</td>
<td>0</td>
</tr>
<tr>
<td>0.15 &lt; E ≤ 250</td>
<td>0.0025</td>
</tr>
<tr>
<td>250 &lt; E ≤ 750</td>
<td>0.004</td>
</tr>
<tr>
<td>750 &lt; E</td>
<td>0.0005</td>
</tr>
</tbody>
</table>

Are the relevant markets mature or congested? Is there space for newcomers?

According to some studies the Greek market has a lot of maturity signs but also a lot of still uncharted areas. For example it seems that the number of the fixed alternative operators is just enough for the double play market, but there is still room for services and network deployment in non-urban areas. In addition a whole new market for MVNOs may be created especially if the plans for merge of two out of three mobile operators are successful.

**MOBILE COMMUNICATIONS**

In November 2011 the NRA concluded the second auction of the GSM licenses that were awarded in 1992 and were valid for 20 years. COSMOTE, VODAFONE-PANAFON and WIND were awarded the entire available spectrum in the 900 MHz and 1800 MHz band for a total price of 380.535.000 euros. Vodafone and Wind have announced that they have started talks on the possibility to merge and that greatly reflects a reality of the market. If the merge concludes it shall alter the mobile market as, for time being Cosmote holds more than 45% of the relevant market and is about to exceed the threshold of being dominant.

**FIXED COMMUNICATIONS**

OTE is the incumbent operator still partly owned by the Greek State and managed by the German incumbent Deutsche Telekom. OTE is under heavy regulation since all fixed alternative operators still depend on its copper network, leased lines and hubs for offering single and double play services. The cost of Interconnection, LLU services and leased lines rental are a subject of reference offers approved by the EETT. OTE in 2008 revealed its plans to deploy a VDSL network while the Minister of Communications announced in 2009 a nationwide FTTh. Nowadays, that the VDSL technology seems obsolete, OTE has announced that it may move to an FTTc but shall never support a move to FTTh. On the other hand the economic crisis in Greece has delayed, if not stopped, the government’s plans for rolling out an operator-neutral FTTh network. In any case EETT had proactively regulated the VDSL market and on December of 2011 approved the OTE’s wholesale prices for the relevant services using a bottom-up
cost oriented method applied on the BRAS & DSLAM costs (since this is the first time the VDSL prices are measured).

The number of fixed alternative operators has decreased dramatically within the last two years due to intense competition. It seems that there is limited space for more fixed operators aiming to offer double play, especially in big urban areas, but very limited competition regarding services addressed to specific geographical regions. Other services offered by the fixed operators are the Wholesale Line Rentals (WLR) and the carrier preselection, but both are highly dependent on the incumbent’s network and with a very narrow profit margin compared to LLU.

Many fixed operators have started deploying their own networks (mainly fiber rings) but not as much as to be completely out of a need for OTE's leased lines. Fixed Wireless Access is extremely limited since all efforts in offering LMDS or WiMAX services have failed to reach a “commerciable” level so these networks are used only for network support, if any.

The latest market trend is that every mobile operator is affiliated, if not merged, with a fixed operator. Cosmote with OTE shall soon merge (but a relationship with the incumbent is not always a good thing), Wind was merged with fixed Tellas and Vodafone has a “close relationship” that turns to shareholding Hellas Online (which has bought also a fiber optics operator). With the obvious exception of Cosmote the other two mobile operators are able to offer double play services plus special reductions to mobile services, creating a highly competitive market for the other fixed operators.

Convergence is not a sci-fi in Greece. OTE, Forthnet, HOL and ON Telecoms have started to offer TV and content services through their networks some with interactive menus and extended VODs. Content regulation and regulation of Market 18 (Broadcasting transmission services) still presents some difficulties (see below section 6).

Is online gambling allowed in Greece?

A recent study made by the University of Economics in Athens revealed that e-gambling is rapidly increased in Greece. More than 31% of our fellow Greeks that go online have used at least once an e-gambling service, while 12% of them are regular players. They estimate that the turnover of this business exceeded in 2010 the 300 million Euros and it is not coincidence that the traditional lotteries have seen a 15% decrease of their sales. The strict regulation against any form of gambling away from the state owned national lottery and OPAP led to a de facto new market, totally out of any control. In addition Greece is paying penalties for as long as it maintains a monopoly in gaming as the ECJ has ordered.

After a long debate and pressure from international companies and the EU the Law 4002/2011 was issued in order to fix all pending issues with gambling in Greece including e-gambling. It seems though that the relevant minister (initiated probably by some recent case law of the ECJ) decided to maintain the dominant power of the state owned gaming operator OPAP by awarding it with the unique license to operate automatic gambling machines. Regarding online casinos the Law provides that the Minister of Economics will decide in a later stage the number and the terms of licensing.
The Remote Gambling Association (RGA) and six Greek casinos have resorted to the European Commission against that Law for breaching some fundamental principles of the EU such as the freedom of establishment, the freedom of rendering services, competition and state aid.

**How Internet and online services are regulated in Greece?**

The P.D. 131/2003 (implementing Directive 31/2000/EC) provides that the provision of services of information society are free and protected, the provider cannot be liable for illegal content and data transferred that is not moderated (hands off provision) and the law applies is the one of the operator’s domicile. Of course all the consumer protection legislation also applies, especially in e-commerce activity.

Freedom of expression is constitutionally guaranteed and still none of the existing legal instruments allow for a lawful interception for breaching IP rights. Bloggers are protected and usually they do not face the heavy penalties the law provides for defamation through mass media (see relevant article of Spiros Tassis in DiMEE 2006, p.518, cited in all the relevant court cases).

Intellectual Property is highly respected in Greece and the relevant Law 2121/1993 has been updated to regulate IT and online IP breaches. There is no specific provision equal to the French “three strikes” or the British “Digital Act” so generally the operators are not obliged to deny access to Internet to users that illegally download protected content. Creative Commons also apply in Greece.

It still seems to be pretty much market space for VAS in the Greek market. Applications and content management together with online media are an upcoming business with a strong potential.

**What about ip tv and internet media?**

Law 3592/2007 in coordination with the basic Law 3431/2006 set the details on broadcasting through communication networks. Broadcasting can be realized either with the use of specific spectrum or through wired broadband.

A dual authorization scheme has been created according to which the national committee for radio-television (NCRTV) grants the right for the content while the EETT authorizes for rendering the relevant communication services (Market 18). Accordingly the communications operators may found themselves liable for transferring illegal content and lose their license. In addition there is limited regulation over video on demand and no decision on the digital dividend. This complex environment adds to the difficulty of the project but it seems that most of the problems are disappearing, since EETT has taken decisive steps on safeguarding this market.

**Can I be a domain name registrar in Greece? What about electronic signatures?**

Domain Names are regulated by the EETT Decision no 592/012/2011 on “Regulation on Management and Assignment of [.gr] Domain Names”.

Any person or entity is allowed to become a registrar as soon as possess the building facilities and information systems infrastructure enabling them to respond duly to their obligations and have available their own Name Servers (at least two)
According to P.D. 150/2001 which implemented Directive 99/93/EC and Law 3431/2006 and several secondary legislation issued the EETT is the authority responsible for control and supervision of certification-service providers for electronic signatures which are established in Greece, as well as for ascertaining compliance with “secure signature creation devices”.

EETT by issuing several Decisions has established a solid regulatory framework but the truth is that electronic signatures are not commonly used since e-government is very limited. It seems though that there is an upcoming demand on certification since all transactions with the state soon shall be realized only through online means.
What’s the existing regulation of Greek electronic media landscape?

Analogue television, which is still the most common electronic media in Greece, is regulated by several texts (mainly Laws 2328/1995 and 3592/1997). The most serious inconvenience of the existing regulation relies on an uncertain licensing status of private broadcasters since the entry of private media (1989). Invitations to tender for the licensing were published but the procedures were annulled (except for radio stations in Athens region). The Greek state recognised and prolonged the “legal” status of the TV operators that had participated in the 1998 tender and the radio stations, active on November 1st, 1999, by means of various acts. In 2010, the Supreme Administrative Court has declared unconstitutional such legislative provisions for television stations, indicating to the government that a definitely determinable schedule for the licensing operation must be declared.

What are the regulatory bodies for electronic media in Greece?

The Secretariat General of Media (part of the Prime Minister’s office) is the body responsible to elaborate public media policy. A minister (nominated by the Prime Minister) is normally the head of this body, which collaborates for this purpose with the Ministry of Infrastructure, Transport and Networks, responsible for planning spectrum useful for radio and television. National Council for Radio and Television (NCRT), an independent body composed of 7 persons, is the authority responsible for the regulation, supervision and monitoring of media, but, having no important regulatory instruments, it has limited its activity in imposing sanctions for content matters.

National Telecommunications and Post Commission (NTPC) supervises media as far as their technical aspects are concerned.

What’s the procedure for a licensing tender (analogue radio)?

After an inter-ministerial frequency chart and specifications brought by the competent ministry of the media regarding the range, number and type of licences available have been published, NCRT runs the licensing tender. Licenses are allocated after an evaluation of the tenders received on the basis of various criteria, including, amongst others, the applicants’ “legal” experience in broadcasting, their economic viability, the quality and diversity of their programming.

What about the implementation of digital terrestrial television?

Law 3592/2007 does not contain a specific timeframe for the digital switchover and all crucial issues (such as licensing) are to be decided at a later stage. Since 2006, the public broadcaster ERT took great steps with two digital platforms. In 2008, NCRT authorised private channels to transmit their analogue programs in a digital way, and DIGEA, the multiplex operator of
private channels of national coverage, has already launched digital transmittals in the most important Greek cities.

**Can a foreign company acquire a television or radio station?**

There is no limit to the participation of non-Greek companies in a television or radio station. As far as the obligation of having nominative shareholders belonging to natural persons concerns (for companies being outside Stock Exchange), it does not apply for companies that have not this obligation according to their domestic law. In this case, they must present to NCRT an official certificate mentioning this exception and a list of shareholders having more than 1% of the capital.

**Are there any limits on concentration of electronic media ownership?**

Ownership of an electronic media undertaking is permitted up to 100% but concentration of electronic media of the same type is prohibited. A distinction between informative and non-informative (i.e. music or sport channels) is established in order to be in line with a strict constitutional disposition. It is possible for one company to have only one informative and only one non-informative channel. Article 1, read together with Article 3 of Law 3592/2007, defines concentration as the control enjoyed by a natural or legal person over more than one electronic media of the same type, that is, the exercise of substantive influence over media management and operation.

**Are broadcasters subject to competition rules?**

Law 3592/2007 has complemented Law 703/1977, the general Greek competition act, by laying down specific provisions on the notion of dominant position and concentration of companies in the media sector. Concentration is forbidden when one or more of the media undertakings concerned enjoy a dominant position or a dominant position is the result of the concentration itself. Specific notification requirements apply and precise “dominance thresholds” are established, ranging from 25% to 35%, depending on the number of the media markets involved. The abuse of a dominant position is prohibited.

**What about satellite pay-TV and IPTV in Greece?**

Licence for satellite pay-TV is allocated by NCRT according to Law 2644/1998. Each licensee has to contract with Greek State and to pay an annual sum (“economic exchange”), evaluated to 44,000 € for each 24 hours of daily program. Others obligations such as must carry of public broadcasters, production of Greek speaking program and European origin programmes and information of NCRT on annual programming must be observed. There aren’t any special dispositions for IPTV. NCRT approves of the transmission of each channel via IPTV operators, who must notify to NCRT agreement with new channel.

**Are broadcasters subject to Copyright regulations?**

Broadcasters acquire rights and obligations according to Copyright Law. Greek law is fully harmonised with Community legislation, having implemented all relevant directives. By to Art 48 L. 2121/1993, they obtain related rights on their broadcasts, i.e. they have the right to permit or prohibit transmission or communication of their broadcasts to the public or
in places accessible to the public against payment of an entrance fee, the fixation of their broadcasts on sound or audiovisual recordings (except when they merely retransmit by cable the broadcasts of a radio or television organization), the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of the fixation of their broadcasts, the distribution to the public of the recordings of their broadcasts, the renting and lending of such recordings and the making available to the public. Broadcasters are at the same time users of copyright protected content, therefore they are obliged to pay an (equitable) remuneration to the performers (actors, dancers, dubbers, singers or musicians) and to phonogram producers for the broadcasting of audiovisual and audio fixations (Art. 49 L. 2121/1993). Said remuneration is subject to mandatory collective administration, while performers may not assign the right to an equitable remuneration.

Is Greek law complied with the Audio Visual Media Services Directive (2010/13/EC)? Are there any special dispositions for on demand services?

Presidential Decree 109/2010, harmonizing Greek Law with the Audiovisual Media Services Directive, generally follows the flexible EU framework concerning both television broadcasts and on-demand services. For these latter there is no special procedure of licensing, and content obligations related to quotas for European programming and protection of the minors are generally regulated.

What about content regulation?

PD 109/2010 obliges TV Broadcasters to devote at least 51% of their transmission time (on an annual basis) to European programming (Art. 17). 25% of the transmission time has to contain original Greek language programming and 10% must be originated from independent productions. Special provisions are dedicated to the protection of minors.

Is advertising and teleshopping subject to specific rules?

Several restrictions concerning advertising exist according to PD 109/2010. The advertising of tobacco, war games, medicinal products as well as medical treatments available on prescription is totally prohibited. Advertising of toys and alcohol is prohibited on TV channels during transmission hours considered to address minors (practically from 07.00 to 22.00). Advertising prices are freely determined by each broadcaster, but competition rules must be respected vis a vis advertisers (especially for price discrimination). Broadcasters are obliged to register once a year (and whenever, they choose to change their existing pricelist within the same year), their advertising tariffs/prices before the Tax Authority.

Are competition shows relying on pure luck/lottery, freely broadcasted?

Broadcasting of such programmes is subject to a license, issued by a special authority following the positive opinion of the Greek National Council for Radio and Television (NCRT) (Law 4002/2011).

Are there specific regulations regarding offensive and harmful material offending viewers and listeners?

When offensive and harmful material is broadcasted, the person offended may complain and ask for the restoration of his/her reputation. The relevant broadcaster must decide whether
the broadcast should be withdrawn, or an apology must be broadcasted. In both cases, NCRT has to take the final decision. This procedure can be used independently from a lawsuit that may be filed before the Courts seeking damages.

**What's the legal status of press media?**

Article 14 of Greek Constitution states that every person may express his thoughts orally, in writing and through press. It also contains an obligation of media outlets to register ownership status and information regarding their financing. Law 1092/1938 provides for a number of privileges for the press, such as a discount on telephone and postal tariffs and at the same time stipulates a number of obligations for it, such as respect for the personality and privacy of an individual. Law 2328/1995 sets limits to the concentration of newspapers.

**Is there any special regulation for the Internet?**

Presidential Decree 131/2000 that has implemented EU Directive 31/2000/EC (E-Commerce) regulates specifically the problem of accountability of internet services provider. Article 11 of the PD introduces the general principle of the non obligation of internet services provider to monitor the content carried over the Internet under the conditions that he: a) does not initiate the transmission, b) does not select the receiver of the transmission and c) does not select or modify the information transmitted.
IN GENERAL

What is considered by Law as Advertisement?
Advertising, in accordance with Article 9 of Law 2251/1994 is any communication of any kind of form, used in the context of a commercial, industrial, crafts or professional activity in order to promote sales of goods or services, including Real Estate and the corresponding rights and obligations.

Commercial communications which do not constitute advertising.
The EU Directive 0052/1989 differentiates advertising from the following:
“Surreptitious or covert audiovisual commercial communication” as the purposeful and against monetary payment or return, verbal or visual communication and presentation for advertisement purposes of any goods, or services, or even of the label, the trademark or the activities of a producer of goods or a provider of services, that could potentially mislead the public regarding the nature of the overall presentation.
‘Sponsorship’ as the contribution of a public or private business or of a natural person which do not provide services regarding the audiovisual industry nor do they produce any audiovisual projects, for the purpose of funding audiovisual media services or programs aiming at the promotion of its label, trademark, image, activities or products;
“Teleshopping“ as the direct promotions broadcast to the public in order to provide goods or services against payment, including real estate, rights and obligations;
“Product placement” as any form of audiovisual commercial communication which consists in the presentation of a product, service or their corresponding trade mark, in the flow of a program, against payment or similar quid pro quo.

What is outdoor advertisement?
The outdoors and public promotion, in any way and by any means, via messages of all kinds, which aims at promoting commercial and professional purposes or other relative activities. Relevant qualifications and restrictions provided for in Law 2946/2001.

Who are the regulatory authorities responsible for Advertisement?
The Ministry of Development - General Secretariat for the Consumer, and the National Broadcasting Council (ESR).

What are the self-regulation agreements governing Advertisement?
On the companies’ side there has been a set of rules adopted regarding their self-restraint and their monitoring against deceptive advertisement, under the initiative of the following organizations:
- Association of Advertising Companies - Communication (EDEE)
- Hellenic Advertisers Association (SDE)
\begin{itemize}
\item Communication Control Council (ASC)
\end{itemize}
The last one monitors the compliance to the Greek Code for Advertisement and Communication, the continuous updating of the Code according to the current developments, the establishment of Committees for the implementation of and participation in associations abroad to promote self-regulation and the enforcement of ethics in communication.

**ADVERTISEMENT CONTENT**

**Which products are not allowed to be advertised?**
EU Directive 552/1989 prohibits the advertising of cigarettes and other tobacco products including indirect forms of advertising. In addition, prohibited is any television presentation advertising drugs and medical treatments available only on prescription in the Member States in whose jurisdiction the broadcasting organisation falls.

**Other restrictions?**
Directive 552/1989 places restrictions on television advertising and teleshopping for alcoholic beverages, including restrictions set by subparagraph d of paragraph 3a of Article 3 of Law 2328/1995 concerning juvenile viewers.

**What must not be included in Advertisement?**
In accordance with subsection c of the 3rd paragraph of Article 3 of Law 2328/1995, television advertising must not:
\begin{itemize}
\item a) be an affront to human dignity,
\item b) to discriminate between race, sex, religion or nationality,
\item c) be offensive to religious or political beliefs,
\item d) to encourage behavior prejudicial to health or safety of persons,
\item e) to encourage behavior prejudicial to the protection the environment.
\end{itemize}

**What is comparative advertising and under what conditions is it permitted?**
The law allows, under certain conditions, comparative advertising, ie advertising that allows, directly or indirectly or by implication, the identity of a specific competitor or goods or services he offers, if the advertisement compares objectively the essential, relevant, verifiable context and with fair characteristics of competing goods or services.

**When is it possible to display advertisements?**
In accordance with subparagraphs a to d of paragraph 5 of Article 3 of Law 2328/1995, the advertisement may be inserted between programs and, under conditions, in their duration.

**During which transmissions are advertisements prohibited?**
According to subsection e of paragraph 5 of Article 3 of Law 2328/1995, during religious services, advertisements should not be transmitted. Television news, news reports (such as greenhouse political dialogue), current affairs programmes, documentaries, religious programmes and children’s programmes, scheduled duration is less than 30 minutes should not be interrupted by advertisements. When these programmes are of a duration exceeding 30 minutes, then comes into force what exists for the projection of advertisements.

**Is there a time limit display for advertisements?**
Relating to the allowable time limits for advertisements is provided in paragraph 6 of Article 3 of Law 2328/1995.
ADVERTISING COMPANIES

What is required to establish an advertising company?

The law does not require a specific legal form, or set a specific condition, thus for the establishment of an advertising company the procedure and conditions depend on its corporate form.

In which Chamber should the interested party apply?

Responsible for advertising agencies is the Business Chamber.

Is there an inconsistent involvement of advertising companies with other companies?

According to PD 310/1996 and Law 2644/1998 advertising companies may not be involved in radio or television, or newspapers or registration of audiovisual works, and should maintain their autonomy in relation to broadcasting market research firms.

What are the requirements for registration of the Public Advertiser?

The entry of companies interested to undertake activities, advertising or other relevant public viewing as per the Register of Article 3 of Presidential Decree 261/1997 and Article 27 of Law 3166/03, will be held in the same classification in at least one of the following categories:

a. Planning and organization of advertising strategy
b. Creation of content (creative) or the imprinting of a physical medium (production)
c. Providing advisors on choosing the appropriate media promotion (radio, television, print material, etc.)
d. Providing advisors and general services in marketing and public relations and planning and organizing websites.

Any interested company can be listed in more categories.
Such a company must be a company of legal standing. The capital of the company concerned must be at least 60,000 Euros.
The company concerned must fulfill all requirements as a business organization, staffing and logistics, and to fulfill its contractual obligations in a proper way with efficiency.
That at least 75% or more of their gross income, during the past twenty four months before the evaluation of the request, should come from contracts and general agreements, which have been drawn directly with advertisers or other end users of their services, as evidenced by a certificate by a recognized firm of chartered accountants - auditors.

OTHER LEGAL - TAX QUESTIONS

What are the extra fees paid for an advertisement?

Any radio, TV station, and newspaper or magazine, broadcasting or publishing, and based in any part of the Greek territory, provided by the applicable provisions, is currently obligated to pay Excise and Press taxes, and must submit to the relevant Internal Revenue Service (PES), its pricelist advertising and sponsorship, which it administers, which should include all discounts, commissions and promotions, and the recipient, whether it be the person who is advertised or the advertisee concerned.

Who are exempt from the above charges?

In accordance with Article 2 par 1 section of the 2nd. subparagraph LD 1344/1973 exempt from payment of the Press tax of the State, are municipalities, legal entities of public law and Public utilities.
Also exempt are non-profit organizations, and social content messages projected in accordance with the order of the first subparagraph of paragraph 21 of Article 3 hereof.
What is the periodicity of these dues?
Paid each calendar two months up to the 20th day of the month which follows two months following the completion of specific forms of the advertisee or promoter when mediated by the Advertiser under the instructions of the advertisee.

What are the consequences of failing to pay the above dues?
In accordance with the provisions of Articles 33 of Law 2429/1996 and 10 of Law 2328/1995, the timely and adequate non-payment of the Press tax by the broadcast media and magazines, among other things implies the acknowledgment of such debt by the TSPEATH against the Company and recoverability in accordance with the provisions of KEDE, and provides instigation for criminal proceedings, and allows the party responsible for collecting the insurance fund and the right to have the certificate, which is enforceable and collected under the provisions of KEDE.

What summarizes the main enactments that one can enquire in connection with advertisement?
For the interpretation of the Joint Ministerial Decision Z1-496/2000 also issued was Z1-512/2001 Circular.
The questions dealt specifically with relevant legislation as described above.
PRIVACY, DATA PROTECTION AND DATA RETENTION

Is the right to the confidentiality of communications protected by the Constitution?

According to article 9 of the Hellenic Constitution privacy and family life of each one is inviolable. According to article 19 par. 1 of the Hellenic Constitution the confidentiality of the communications is absolutely inviolable with the exception of national security reasons and the criminal investigation, detection and prosecution of serious crimes, where the Judicial Authority is entitled to order the lawful interception of content and access to communications data. Violation of the constitutional right leads to criminal and in some cases administrative sanctions.

According to article 19 par. 2 of the Hellenic Constitution the protection of confidentiality of the communications is also a matter of an Independent Authority (A.D.A.E.).

Beyond the content, are communications data (traffic and location data) protected on the same level?

According to the article 9A Greek Constitution all persons have to be protected from the collection, processing and use, especially by electronic means, of their personal data. Furthermore, the protection of personal data is ensured by an Independent Authority (D.P.A.). However, communications data as part of the electronic communications are protected in the same way and under the same requirements as the content.

Which is the competent Hellenic legal framework?

Act 2225/1994 provides the legal requirements and the judicial procedure for the lawful interception of the content of communications and access to communications data.

Act 3115/2003 provides the legal framework relating to the constitution, the operation and the functions of the Independent Administrative Authority monitoring the protection of confidentiality of communications, procedure of lawful interception and access to communications data and application of the Data Retention Directive. Security Regulations for the Communication and Internet Service Providers have been issued by the Independent Authority.

Presidential Decree 47/2005 under the title “Procedure, technical and organizational guarantees for ensuring lawful interception” provides the details for the technical and organizational measures for both lawful interception and access to data.

Act 3431/06 has implemented Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/7/EC and also provides the legal framework relating to the constitution, the operation and the functions of the National Regulatory Authority “Hellenic Telecommunications and Post Commission – www.eett.gr).


For what reasons lawful interception of the content and access to communications data may be judicially ordered?

For investigating, detecting and prosecuting specific criminal offences (mainly felonies) and for national security reasons.

Under which requirements lawful interception of the content and access to communications data may be judicially ordered?

In the context of particularly serious crimes is needed: justified suspicions of committing the crime, need of tracing the place of staying of the defendant, prior exhausting other means as an ultimum refugium (meaning that finding the defendant is by any other means [than lawful interception or access to data], impossible or extremely difficult).

In the context of national security is needed: information or other elements which lead to estimation of danger for the national security (not justified or specific reasons or risks).

What is the procedure for lawful interception of the content and access to communications data?

After an application of the Investigating Judge or the Prosecutor or the Law Enforcement Agencies (LEAs) during the pre trial criminal procedure (inquire), the Judicial Council (consisted of three judges) orders lawful interception of the content of communications or access to communications data, or both. In case of emergency the Prosecutor or the Investigating Judge issues an order which has to be confirmed by the Judicial Council within three (3) days. The order is secret and the target of the inquiry shall not be notified.

During a criminal trial, the Court has the right to issue the same order as above mentioned.

In that case, the order is brought in the presence of the defendant.

In case of national security reasons the order is issued only by the Prosecutor of the Court of Appeal, under total secrecy.

May lawful interception of the content and access to communications data be ordered for other reasons?

No, the order may be issued only either for national security reasons, or for the investigation, detection and prosecution of criminal offences.

What is the procedure of executing the judicial order for lawful interception of the content and access to communications data?

The judicial order is sent to the Communications or Internet Service Provider (CSP or ISP – “The Provider”). The Provider is obliged to execute the order by giving access to the LEAs or the competent authorities.

COMMUNICATIONS AND INTERNET SERVICE PROVIDERS

Which are the Providers? Which enterprises are obligated to give access to lawful interception of the content and access to communications data after an order?

Every company or legal person or entity which falls into the definition of “provider of publicly available electronic communications service” according to Directives 2002/58/EC and 2002/21/EC.
Has the competent European legal framework been implemented?

Which are the obligations of the Providers concerning the protection of the user’s privacy, data and communications?
Providers are obligated to respect as a minimum certain data security principles set out in the above mentioned Directives (as implemented in the national legal framework) and take the necessary and appropriate technical and organisational measures to safeguard security of their services and the security of the publicly available network, to ensure confidentiality and security of processing of data. Providers are obligated to inform the subscribers and/or users for any particular danger of the security of the network. Providers are also obligated to respect and apply all the Regulations of the competent independent administrative authority (A.D.A.E.).

Does the Hellenic competent legal framework contain further legislative measures for the security of communications and data beyond the above mentioned of the three (3) Directives?
Act 3674/08 under the title “Ensuring the security of privacy and confidentiality in telephony services sector” imposes further obligations and stipulates that Providers are obligated to take the appropriate technical and organizational measures to safeguard security of their services, premises, equipments, hardware, software and any kind of systems for publicly available telecommunications services. Providers are culpable for the security of their premises, equipments, hardware, software and any kind of systems for publicly available telecommunications services. They are obligated to have a special security Policy, following the Security Regulations of the competent administrative authority – A.D.A.E.. This Policy shall be approved by A.D.A.E. This special security Policy refers to: a) systems which shall be used for ensuring the secrecy of communications b) evaluation of the potential risks c) measures for prevention of risks. Act 3674/08 introduces the obligation of Providers to use cryptography for the voice signal of information in specific cases of transmission. It also introduces the obligation of the Providers to use a computer program of automatic registration (logs) of all the functions of the systems of the Providers. A.D.A.E. under the mentioned Act shall conduct audits and inspections of the Provider's premises, equipments etc. and the Providers are obliged to inform immediately A.D.A.E., the public prosecutor and the subscribers in case of violation or potential risk of the systems and confidentiality of the communications. Administrative sanctions may be imposed by A.D.A.E. to the Providers in case of non complying to the above mentioned obligations.

What are the obligations of the Providers according to the Data Retention Directive as implemented?
Communications and Internet Service Providers are obligated according to Act 3917/2011:
- Not to erase but retain the traffic and location data of the communications as referred to the Act for a period of twelve (12) months (including unsuccessful call attempts).
- Not to retain content of communications.
- Retain the traffic and location data within the Hellenic territory premises.
- Give access to the said data under the requirements of the lawful interception law.
Take the appropriate technical and organizational security measures to protect the data against accidental or unlawful destruction, accidental loss or alteration, or unauthorized or unlawful access, storage, processing or disclosure.

Take the appropriate technical and organizational security measures to ensure that they can be accessed by specially authorized personnel only.

Take the appropriate technical and organizational measures for the automatic destruction of the non preserved data after one (1) year of the communication.

Apply special security policy according to Regulation issued by A.D.A.E. and D.P.A.

Assign to an employee of the Provider (“Security Officer”) the application of the special security policy.

Is there any cost reimbursement by the State for the Providers supporting the data retention procedure and allowing access to communications data or content of communications in the context of the lawful interception procedure?

No, there is no cost reimbursement by the State. All the expenses and costs burden the Providers.

NATIONAL ADMINISTRATIVE INDEPENDENT AUTHORITIES - SANCTIONS

Which National Authorities are charged with tasks resulting from the above mentioned Directives concerning communications confidentiality and data security?

“Hellenic Authority for Communication Security and Privacy” (A.D.A.E. – www.adae.gr) is the administrative independent authority which is responsible for ensuring the confidentiality of letters and all other forms of free correspondence or communications, for ensuring the procedure (especially between the Providers and the LEAs) of lawful interception and access to communications data, for ensuring the security of communications for publicly available electronic communications services and finally for monitoring the application of the Data Retention Directive as implemented with Act 3917/2011.

A.D.A.E. has issued several Regulations for the security of communications, data retention and the technical procedure for lawful interception. Their application is obligatory for the Providers. The second competent independent administrative authority is “Hellenic Data Protection Authority” (www.dpa.gr) consisted under Directive 95/46/EC and is responsible for monitoring the application of the statutes for the legal framework of any kind of personal data (Directives 95/46/EC and 2002/58/EC) and also for co-monitoring the application of the Data Retention Directive (2006/24/EC) as implemented with Act 3917/2011.

Which are A.D.A.E.’s main responsibilities?

- Inquiring and conducting inspections and audits at the premises, equipments, archives, databases and documents of the Hellenic National Intelligence Service (NIS) and Providers in order to ensure the application of the legal framework for the protection of confidentiality of communications, for data retention procedure, for the lawful interception and for the security of the services, the network, the hardware and the software of the Providers.
- Confiscating any means used for violating the confidentiality of communications and security.
- Issuing instructions, recommendations, opinions and regulations for ensuring confidentiality and security of communications, data retention, and the procedure of lawful interception.
• Imposing administrative sanctions (e.g. fines) in case of violation of the legal framework for the protection of the confidentiality and security of communications, for data retention procedure and for the lawful interception procedure.
• Receiving from Providers every four (4) months a Report containing a list of all the judicial orders issued for lawful interception and access to communication data.

Which are the main Regulations of A.D.A.E. for the Providers?

Regulations for ensuring confidentiality and security of:
  • Mobile communications services (no 629a/2004).
  • Fix communications services (no 630a/2004).
  • Wireless communications services (no 631a/2004)
  • Internet communications services (no 632a, 633a, 634a/2005)

What are the sanctions in case of infringements of the provisions for unlawful interception, access to data and data protection procedure?

Criminal liability: a) sanction of imprisonment up to ten (10) years for the individual, b) sanction of imprisonment up to ten (10) years and a fine up to 100,000,00 and 200,000,00 euros for the Providers (legal representative, member of the board, security manager etc.) and c) sanction of imprisonment up to ten (10) and twenty (20) years and a fine up to 300,000,00 and 350,000,00 euros in case of danger for the democracy or the national security because of the breach.

By virtue of article 9 Act 3674/2008 a new type of crime has been introduced to Penal Code under the title “Crimes against the security of telephone communications services” (art. 292A P.C.). There are several sanctions of imprisonment for whoever (including unauthorized personnel of the Providers) without legal right and unlawfully accesses to connection, network, hardware or software of the Provider and creates a danger for the security of telephone communication.

Administrative liability by imposing monetary sanctions (fines) from the competent Independent Administrative Authorities to the Providers (legal representative, member of the board, security manager etc.). Fines go up to 5,000,000,00 euros and there is also the fine of suspension or revoke of the services of the company.

Civil liability (compensation) may arise because of moral or other damages. In that case the minimum compensation decided by the civil court shall not be less than 10,000,00 euros, unless the applicant asks for less.

PRIVACY - ANONYMITY ON THE AREA OF TELEPHONY SERVICES-OBLIGATIONS OF THE PROVIDERS

Which means or measures has been taken to increase the traceability of users of communications services so as to assist LEAs in the attribution of end user devices to the persons using them?

The traceability of mobile phone users, in particular those using prepaid SIM cards, and the matter of their anonymity has been dealt with Act 3783/2009, which imposes the obligations on the Providers and the users to make identifiable the persons, the services and the mobile equipments for national security reasons and investigation-prosecution of serious crimes. The obligation is imposed only for the mobile phone services.

What are the obligations of the users?

All users, either subscribers or not, has been obligated to register with the Providers their name, surname, place and time of birth, copy of ID card or Passport or Green card (foreigners permission of staying) and TAX identification number etc. If the user is a legal
entity, the same obligation shall exist and it shall be needed to register the name of the company, the registered offices of company, name and surname of the legal representative and number for TAX Authority.

What are the obligations of the Providers?
There shall be also an obligation for the Providers to register the telephone number, IMSI, IMEI, date and time of the first activation of the service, CELL ID, SIM card number. For the new users (after issuing of the Act of 2009), the Provider shall be obliged to collect the above mentioned data, which shall be retained in its archive, as a requirement of activating the service. The Provider shall activate the service, only upon the condition of declaration of the required data.

Is there any cost reimbursement by the State for the Provider?
No, there is also no cost reimbursement for collecting and retaining the data from the Provider.

How the LEAs may access the retained data?
The LEAs may access the data under the conditions and requirements of Act 2225/94 for national security reasons and for investigation-prosecution of particularly serious crimes, after a judicial order.

Which is the competent administrative independent authority for monitoring the procedure?
National Regulatory “Commission of Telecommunications and Postal Services” (E.E.T.T.) www.eett.gr supervises the procedure and shall be responsible for monitoring the application of the law.

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**AREAS OF PRACTICE**

Criminal Law

Data Protection and privacy in the electronic communications sector

**EXPERTISE**


Legal Counseling to WIND Hellas communications and internet service provider.

Participations on behalf of the Hellenic Ministry of Justice before the European Commission as an expert for the Data Retention Directive (24/2006/EC)

Member of the Special Legislative Committees of the Hellenic Ministry of Justice for:
- The implementation of Data Retention Directive (24/2006/EC)
- The improvement of the legal framework concerning the Independent Administrative Authority “The Hellenic Authority for Communication Security and Privacy (ADAE)”

- The implementation of the P.N.R. Agreement
What are the basic rules for registering a Greek domain name (ccTLD “.gr”)

a) Who is the responsible administration Authority?
   The administration Authority that is responsible for the Greek domain name “.gr” is the National Authority for Telecommunications and Post (EETT). According to its latest decision held in the beginning of 2011 (no 592/012/3-2-2011) in order to acquire a Greek domain name the interested party must make an application to one of the competent Registrars that have the permission to grant such names.

b) What is the process followed?
   The whole process in principle follows the “first come first served regime”, hence in order to obtain a new domain name, this name has to be free and not already registered by someone else. A domain name can be registered both by a legal or physical person both for commercial and non commercial purposes, regardless if this person is established in the Greek territory or not. However, each domain name can be obtained only by one person and there is no possibility of co-ownership (by multiple owners) of one domain name.

c) What is the duration of the registration and what are the dispute resolution choices I have?
   The duration of the registration is 2 years plus 15 days. After the termination the domain name becomes free again, unless it has been renewed by its owner (renewal can be unlimited for a repeated 2 year term). The transfer of a domain name is possible following a process of declaration before the Registrar that is charged with some administration fees. In case of a dispute arising over a domain name the interested party can choose to resolve it either through an alternative dispute resolution before a panel of EETT experts or by filling an injunction claim before the Courts followed by an ordinary claim before the Courts of First Instance.

What are the basic legal provisions I need to know in relation to the Terms of Use I will draft for my web site?

a) What is the necessary content that must be included in the Terms of Use?
   The Terms of Use that a web site will create and use depend on many factors that differentiate between the diverse “e-business” ventures. For example issues such as the structure of the website, the nature of the products or services sold, the payment
rules, the data protection policy of the company etc. influence the drafting of such 
terms. Nonetheless, in general, the Terms of Use are a necessary part of any web 
site since they should provide the user/consumer with at least the necessary legal 
information regarding the conclusion of the electronic contract/transaction and the 
function of the transactional relationship between the user/consumer and the web 
site owner. Those information requirements are provisioned in:

i) paragraphs 2 and 9 of article 4 of the Law no 2251/1994 and

ii) articles 5 and 9 of the Presidential Decree 131/2003.

b) What is the legal nature of the Terms of Use?

In addition, the Terms of Use are considered by law as “General Terms and Conditions” 
that cannot be individually negotiated by the consumers. For that reason, according 
to article 2 of the Law no 2251/1994, in order for these terms to be binding for the 
consumer:

i) the owner of the web site must bring them into the attention of the consumer 
the later at the time of the conclusion of the contract (by making sure that the 
consumer was able to acquire actual knowledge of their content – i.e. by clicking 
the “I Accept” button of the relevant link that leads to the Terms of Use);

ii) the content of the Terms of Use must be drafted in such a manner that could not 
be construed as “unfair” for the consumer and that keeps a balance between the 
interest of the parties. Otherwise if a term is considered as unfair then that term 
would be void in favour of the consumer;

iii) the terms of use that refer to Greek consumers and are concluded as a contractual 
relationship in Greece should be drafted in Greek language.

What is the right of withdrawal and how can the consumers exercise it?

a) What is the nature of the right of withdrawal?

The right of withdrawal is a special right conferred to a consumer participating to 
a distance contract by the Law No 2251/1994 in accordance with article 10 of the 
Directive 97/7/EC. This right allows the consumer to return the good in its initial 
condition within 14 calendar days form its receipt without providing any reasoning 
for that. At the same time the supplier must return the amount received for the sale 
of that good within 30 calendar days. The only charge that can be imposed to the 
consumer is that for the transportation of the good returned to the supplier.

b) How can the consumer exercise it?

The consumer must notify in writing or electronically the supplier of his intention to 
exercise this right. For that reason, following paragraph 2 of article 4 of the Law no 
2251/1994, prior to the conclusion of a distance contract the supplier must inform the 
consumer of the existence of the right of withdrawal. In addition, the supplier must 
communicate to the consumer the latest at the time of the delivery of the goods, 
the terms and the way of exercising this right in a separate document in writing
or electronically followed by a sample of the declaration of withdrawal. Moreover, following the provision set in paragraph 7 of article 4 of the Law no 2251/1994 the supplier is not allowed to receive payment (in part or in whole) for the goods or services sold before the delivery of the good and/or the provision of the service. If the price is fully or partly covered by credit, granted to the consumer either by the supplier or by a third party, based on an agreement conducted between the third party and the supplier, then, if the consumer exercises the right of withdrawal from the contract the credit agreement can be cancelled based in the provisions of Civil Code without any penalty.

**What do I need to know about direct marketing campaigns and spam?**

a) What is the opt-in system?

In principle according to the first paragraph of article 11 of the Law no 3471/2006 the use of automated call systems (such as fax machines or electronic mail) and in general unsolicited communications in any means of electronic communication, with or without human intervention, for purposes of direct commercial promotion of products or services and for any marketing purpose is allowed only if the subscriber gives his prior written consent (opt in system). In addition, paragraph 2 of the same article stipulates that unsolicited communications with human intervention (such as via telephone or mobile calls) for the above mentioned purposes are not permitted if the subscriber has declared to the service provider that generally he does not wish to receive these calls. For that reason, the service provider is obliged to register for free these declarations in a special subscribers’ catalogue, available to any person interested.

b) When does the opt-out system apply?

According to paragraph 3 of the same article, there exist some exceptions to the aforementioned general rule. When a supplier legally acquires the electronic contact details of a customer or a supplier within the framework of the provision of good or services, these can be used for purposes of direct promotion of the supplier’s similar products or services or for similar purposes even without the consumer’s prior explicit consent. Nonetheless, the supplier must allow the consumer in clear and distinct manner to object to the receipt and use of his electronic details, free of charge and in an easy manner in every electronic message the latter receives (opt-out system). The protection against spam is granted equally to natural and to legal persons.

**Can I issue, transfer and store e-invoices related to my online transactions?**

The law permits the issuance of e-invoices on condition that the authentication and integrity of the electronic document is secured (article 18A paragraph 6 Presidential Decree 186/1992 as amended). According to a Decision of the Minister of Economics and Finance held in 2006 (POL 1049/21-3-2006) that provides guidance for the implementation of the aforementioned general rule, at present, as far as the Greek
Taxation Authorities are concerned, the use of the qualified electronic signature of the supplier or of a smart card system based on a qualified electronic signature on the name of the supplier is not obligatory for the issuance and the dissemination of e-invoices. Nevertheless, what is obligatory for the acceptance of e-invoices is that those e-invoices that are transferred and archived electronically must be issued by using the specific tax mechanisms that has been previously approved by the special Committee of the Minister of Economics and Finance. These tax mechanisms secure e-invoices through the use of an Advanced Secured Electronic Digital Synopsis that is however associated to the mechanism and not to the legal or physical person that issues the invoice. These tax mechanisms are obligatory both for on line and off line transaction. Especially for e-invoices, however, it is also necessary that when they are transferred electronically (from the supplier to its intended recipient), the supplier must also send attached the electronic data of the invoice’s index (“*_a.txt” file) and the electronic data of the digital markup (“*→_b.txt” files). Those files must be stored along with the e-invoice for Tax control purposes.

What is the special liability regime for on line intermediary service providers (i.e. internet access providers, on line auctions, on line market places, on line portals etc)

a) Who can be considered as an on line intermediary service provider?
   The law (Presidential Decree 131/2003 that implemented the Directive 2000/31/EC) provides for a special liability regime for those businesses acting as intermediary service providers under specific conditions. The notion of an on line intermediary is very generic and can match many diverse business ventures such as for example internet access providers, operators of all kind of services (videos, chats etc), on line social networks providers, online marketplaces and auctions, video and photo sharing websites, administrators of blogs and of discussion forums, software distribution websites, news portals, etc.

b) What is the special “limitation of liability” regime?
   The aforementioned special regime bestowed to the on line intermediaries limits their liability provided that they do not influence the context of the content transmitted and/or stored to their systems and that the content is not originated by them (but by a third party using their systems such as a user, a client etc). Hence as a general rule it applies that (following articles 11,12 and 13 of the aforementioned Presidential Decree) for activities such as mere conduit, cashing and hosting an intermediary service provider is exempted from liability when he does not play an active role to the origin of the transmission, the destination of the transmission or the content of the transmission per se. Especially for hosting it is provisioned that the exemption from liability exists on condition that a) the provider does not have actual knowledge of the illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove
or to disable access to the information. All the above exemptions are valid without prejudice to the possibility for a court or an administrative authority to order the service provider to terminate or to prevent an infringement.

c) What is the "no general obligation to monitor" rule?

Additionally, according to article 14 of the aforementioned Presidential Decree the online intermediaries have no general obligation to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity. However, without prejudice to the provisions regarding protection of confidentiality and personal data information society service providers are obliged to promptly inform the competent public authorities of alleged illegal information provided or activities undertaken by recipients of their service and are obliged to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

If I want to expand my e-business in other EU countries which law regulates my activities being a web site company established in Greece?  

a) What is the country of origin principle?

According to article 2 paragraph 1 of the Presidential Decree 131/2003 (that implemented the 2000/31/EC Directive), the information society services provided in Greece or any other Member State by a service provider established in Greece, shall comply with relevant provisions of national legislation which fall within the coordinated field. This means in particular that the Member State of origin is responsible for monitoring the activities of the service provider, in connection with the services provided -and not the Member State receiving such services-, subject however to explicit exceptions provided in article 2 paragraph 3 of the aforementioned Presidential Decree. Thus, a service provider established in Greece can do business throughout the EU area, provided that these activities comply with the Greek legislation. The country of origin principle has the same meaning in domestic law of Greece as under community legislation. The pursuit of an economic activity is what determines where a service provider is established.

b) Which rule apply to B2C e-commerce transactions?

Moreover, as stipulated in article 2 paragraph 2 of the aforementioned presidential decree, the free circulation of information society services from another Member State should not be restricted, for reasons falling within the coordinated field. Therefore, not only national provisions, but also the law of the country of origin should be taken into account on whether an act is legitimate or not. However, the above rule is always subject to consumer protection, following the Rome Convention, which applies to domestic law, stating that if the law of the domicile of the passive consumer provides

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1. Drafted by Apostolia Gatzioura, Junior Associate.
a higher level of protection, it will be the one that shall apply. Thus, in the case of electronic transactions, the rule of the location of the supplier shall bend in favor of the consumer. A derogation from the above principle is only permitted under the strict and restrictive terms and conditions of Article 2 par.4 & 5 of Presidential Decree 131/2003.
ENERGY
What is the basic legal framework for wind energy production?
The main law that liberalized the Greek energy market is L. 2773/1999 which has undergone several amendments and has been supplemented by ministerial decisions. Other basic wind energy laws in force are L. 3468/2006, as amended mainly by L.3851/2010 and L.4011/2011 and supplemented by several ministerial decisions including the Permit Regulation for Renewable Energy Sources (Ministerial Decision Υ ΑΠΕ/Φ1/14810/ 04.10.2011).

Why does the Greek State support wind energy production?
According to Article 1 of L. 3851/2010 which implemented Directive 2009/28/EC (EEL, 140/2009), for climatic protection by promotion of electrical energy production by Renewable Energy Sources (hereinafter “R.E.S.”), constitutes an environmental and energy priority of the highest importance for Greece. The national R.E.S. targets for Greece up to the end of 2020, based on the aforementioned Directive, are as follows:
(a) The energy produced by R.E.S. shall amount to 20% of the gross final energy consumption.
(b) The electrical energy produced by R.E.S. shall amount to a minimum of 40% of the gross electrical energy consumption.
(c) The energy produced by R.E.S. shall amount to a minimum of 20% of final energy consumption for heating and cooling.
(d) The electrical energy produced by R.E.S. shall amount to a minimum of 10% of gross electrical energy consumption for transportation.

What is the main licensing procedure and what steps must be taken in order to complete all the licensing requirements?

Production License
The production license is issued by decision of the Regulatory Authority for Energy (R.A.E.) which is based on the following criteria:
(a) National security,
(b) Protection of public health and safety,
(c) The general safety of the installations and related equipment of the System and the Network,
(d) The energy production capacity of the respective wind farm project for which the application is filed, production capacity which is determined for R.E.S projects through R.E.S measurement of potential. Particularly with regard to wind-derived energy the potential, measurement readings submitted must have been executed
by certified parties, in accordance with standard DIN-EN ISO/IEC17025/2000, as applies for each particular case.

(e) The maturity of process for the materialization of the wind farm project, as demonstrated by studies, by consultations with government statutory stakeholders, as well as by other related information.

(f) Having secured or being able to secure the legal right to use the location where the wind farm project is to be installed.

(g) The ability of the applicant or is shareholders, or partners to complete the wind farm project on the basis of scientific and technological capacity as well as the ability to secure the required funding for the wind farm project from own capital or bank financing or capital from business participation or a combination thereof.

(h) Securing the provision of services for the common good and the protection of Clients.

(i) The potential to execute the wind farm project in compliance with the Special Framework for Spatial Planning and Sustainable Development for R.E.S. and in particular the clauses referring to R.E.S. installation exclusion areas, providing these areas have been marked out in a special and specific way, as well as the clauses regarding the assessment of the capacity in areas where R.E.S. are permitted, so that protection of the environment is ensured

(j) Compatibility of the wind farm project with the National Action Plan in order to achieve the goals provided under Article 1 of L.3851/2010.

The R.A.E. examines if the criteria referenced above are met and decides, within two (2) months from submission of the application or otherwise from the time of completion of the application file, whether or not to issue a production license.

The production license is granted for a period of up to twenty five (25) years and may be renewed for another period of up to twenty five (25) years.

**Connection Offer by the System Operator – Environmental Terms - Forestall license**

After receiving the production license from the R.A.E. the investor simultaneously requests the issuance of:

(a) a connection offer from the System Operator,

(b) a decision of Approval of Environmental Terms, and

(c) Permission to intervene in a forest area, where necessary, or generally such licenses as are required for acquisition of the right to use the installation site for the wind farm project.

The System Operator issues its decision within four (4) months of the connection offer requested.

For the decision of Approval of Environmental Terms to be issued, an Environmental Impact Study and a complete folder of supporting documents must be submitted to the authorised environmental licensing authority. The authorised authority examines the impact of the project on the environment and the proposed measures to mitigate such impact, undertakes compliance with the consultation and publication procedures provided by law, and decides whether or not to issue a decision of Approval of Environmental Terms within four (4) months from such time as the folder is considered complete. The decision of Approval of Environmental Terms is valid for ten (10) years and may be renewed, one or more times for the same period, upon application that must be submitted no later than six (6) months prior to expiry of the decision of Approval of Environmental Terms.
Installation license – Contract for connection – Power Purchase agreement
After the connection offer becomes binding, the investor proceeds to:
(a) acquire the installation license, and
(b) execute the Connection Contract and the Power Purchase Agreement. These
Contracts are signed and go into effect as of the grant of the installation license.
The installation license is granted within a time period of fifteen (15) working days from
completion of evaluation of the relevant documentation.
The installation license is valid for a two (2) year period and may be extended, at the
most, for an equal length of time, by application, so long as:
(a) upon expiry of the two year period, the expenditures for that part of the wind farm
project that has been executed covers 50% of the total investment, or
(b) the required contracts for procurement of the equipment needed for completion of
the wind farm project have been signed, or
(c) any license required for the execution of the wind farm project has been suspended
by a court decision.

Operating License
The operating license is granted, following completion of the commissioning period by the
relevant authority for the issuance of the installation license. The operating license is issued
for a period of at least twenty (20) years and may be renewed for up to twenty (20) years.
Experience has shown, though, that the time for completion of the whole licensing
procedure may exceed the time limits set by Law.

Are there any deviations from the licensing procedure?
Wind farm projects with an installed capacity less than or equal to one hundred (100) kW
are exempted from the requirement of issuance of production and installation licenses.

What is the pricing of a wind farm project (feed-in tariff)?
The electrical energy produced by a wind farm project and which is absorbed by the
System Grid or by the Network, is charged by the System Operator, on a monthly basis, in
euro per megawatt (MWh) of the electrical energy absorbed by the System Grid or by the
Network, including the Network of Non Interconnected Islands.

<table>
<thead>
<tr>
<th>Production of electrical energy from:</th>
<th>Price of Energy (€/MWh) for Interconnected System</th>
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<tbody>
<tr>
<td>Wind energy exploited through land facilities with capacity higher than 50 kW</td>
<td>87,85</td>
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<tr>
<td>Wind energy exploited through facilities with capacity less than or equal to 50 kW</td>
<td>250</td>
</tr>
</tbody>
</table>

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<th>Production of electrical energy from:</th>
<th>Price of Energy (€/MWh) for Non Interconnected Islands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wind energy exploited through land facilities with capacity higher than 50 kW</td>
<td>99,45</td>
</tr>
<tr>
<td>Wind energy exploited through facilities with capacity less than or equal to 50 kW</td>
<td>250</td>
</tr>
</tbody>
</table>
The pricing is readjusted annually by ministerial decisions.

Is there a legal framework for offshore wind farm projects in Greece?
Yes, by virtue of L.3851/2010:

- The installation of wind farm projects within the national sea territory is permitted.
- The exact location of off shore wind farm projects, the sea area they occupy, and their maximum installed capacity is determined by ministerial decisions.
- For the construction and the operation of each off shore wind farm project, the investor follows the Environmental Terms procedure.
- After issuance of the installation license, an open, public tender is announced, for execution of the construction works for the off shore wind farm project and its connection to the network, with financing or by means of self-financing.
- The Independent Office of Renewable Energy Sources which falls under the ambit of the Ministry of Environment, Energy & Climatic Change (YPEKA) is responsible for planning and coordination of offshore wind farms.
How is Greece developing on the RES sector?

The Greek legal structure in the sector of Renewable Energy Sources (RES) is been developing rapidly during the last ten years. Following, the European flow in finding new energy resources to cover the planet needs Greece is drawing new guidelines in its legal and business sphere to attract and lodge investments in the RES area. Nonetheless, the Greek government promised to replace 10% of its current transport fuels with biofuels by 2020.

In order to achieve that in October 2009 a new Ministry for the Environment, Energy and Climate Change was established in order to bring under one sole structure the respective bodies committed with the greatest part of RES licensing procedure, related to energy, environmental and forestry policies. The aim of the Ministry (which was created by the merger of the two prior Ministries the Ministry of Environment, Physical Planning & Public Works and the Ministry of Development) is to facilitate the effective promotion and to fasten the adoption of legislative actions and measures in favour of sustainable development.

What actually biomass, biofuels and geothermal energy covers?

Biomass refers to energy originating from the biodegradable fraction of products, waste and residues from agriculture, including vegetal and animal substances, forestry and related industrial activities, as well as the biodegradable fraction of industrial waste matter and municipal sewage and garbage.

Biofuels are tree liquid or gaseous fuel produced from biomass and more specifically:

- Biodiesel: produced from vegetable or/and animal oils and fats, of diesel quality, to be used as biofuel.
- Bioethanol: ethanol produced from biomass and/or the biodegradable fraction of waste matter to be used as biofuel.
- Biogas: a fuel gas produced from biomass and/or from the biodegradable fraction of industrial waste matter that can be purified and upgraded to natural gas quality, to be used as biofuels, or the wood gas.
- Biomethanol: methanol produced from biomass, to be used as a biofuel.
- Biodimethylether: dimethylether produced from biomass, to be used as a biofuel.
- Bio-ETBE: produced on the basis of bioethanol to be used as a biofuel.
- Bio-MTBE: produced on the basis of biomethanol to be used as a biofuel.
- Synthetic biofuels: synthetic hydrocarbons or mixtures of synthetic hydrocarbons, produced from biomass.
- Biohydrogen: hydrogen produced from biomass, and/or from the biodegradable fraction of industrial and domestic waste matter, to be used as biofuel.
- Pure vegetable oils: Oils produced from oil plants through pressing, extraction or comparable procedures, either crude or refined but chemically unmodified, if they are compatible with the type of equipment or engine employed and the corresponding gaseous emission requirements according to the laws in force.

By Geothermal energy we refer to thermal energy generated and stored in the Earth. Greece lies in a geographic position that is favourable to geothermal resources, both high temperature and low temperature. High temperature resources, suitable for power generation coupled with heating and cooling, are found at depths of 1-2 kilometres on the Aegean islands of Milos, Santorini, and Nisyros. Other locations that are promising at depths of 2-3 kilometres are on the islands of Lesvos, Chios, and Samothraki as well as the basins of Central-Eastern Macedonia and Thrace.

What's the legal framework regulating them?

In 2005, to comply with Directive 30/2003EC, Greece applied L. 3423/2005 “Introduction of biofuels and other renewable fuels in the Greek market”. L. 3423/2005, made it obligatory for all who were involved with production, import and trade of biomass and biofuels in Greece to have a license. It applied some technical specifications for the biofuel quality and permitted the mixture of biofuels with fossil fuels to those who were licensed. In biodiesel, which was the first commercial biofuel in the Greek transport sector since 2005, it imposed the obligatory use of all detaxed biodiesel in the existing biorefineries (in up to 5% blend).

With L. 3468/2006 “Production of Electricity from Renewable Energy Sources and High-Efficiency Cogeneration of Electricity and Heat and Miscellaneous Provisions” the Greek legislation complied with Directive 2001/77/EC. It set a new reality and a landmark in the production of electric energy from geothermal sources, wind farms, photovoltaic systems and hydroelectric stations. Additionally to this it established a licensing procedure for the operation of geothermal and hybrid plants.

L. 3769/2009 that amended L. 3054/2002, in Art.22 foresees the procedure under which companies are allocated to the amount of biodiesel that they can produce and distribute in the Greek market. Though, it has to be noted that the exact amounts are allocate every few years by Presidential Decrees.

After the EC passed Directive 2009/28/EC “On the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC”, which defined the mandatory RES targets for each member-state, Greece simplifies the regulations governing RES by applying L. 3851/2010 on “Accelerating the development of Renewable Energy Sources to deal with climate change and other regulations in topics under the authority of MEECC”.

What important features were included at L. 3423/2005?

Law 3054/2002 “Organisation of the oil market and other provisions”- raised the share of RES used in the Greek market. Law 3423/2005, made it obligatory for all who were involved with production, import and trade of biomass and biofuels in Greece to have a license. It applied some technical specifications for the biofuel quality and permitted the mixture of biofuels with fossil fuels to those who were licenced. In biodiesel, which was the first commercial biofuel in the Greek transport sector since 2005, it imposed the obligatory use of all detaxed biodiesel in the existing biorefineries (in up to 5% blend). Today Greece has managed to reach the EU target and substitute the 5.75% of diesel with biodiesel.

What is the procedure to obtain a production license under L. 3423/2005 as amended by L. 3851/2010?

The Licensing procedures are set by Law 3851/2010, as it amended Law 3468/2006 mentioned above. The current Law kept the basic manners of Law 3468/2006 but it made the licensing procedure more transparent and less bureaucratic.

3.a Production License

“According to Article 2 para1. of the above Law the license to produce electrical energy from R.E.S is issued with a decision of the Regulatory Authority for Energy (R.A.E.) based on the following criteria:
1) National security.
2) Protection of public health and safety.
3) The general safety of the installations
4) The energy production capacity of the project for which the relevant application is being submitted, measurement readings submitted must have been executed by certified parties, in accordance with standard DINEN ISO/IEC17025/2000, as it applies in each particular case.
5) The maturity of process for the materialization of the project
6) The legal right to use the location where the project is to be installed.
7) The ability of the applicant to complete the project on the basis
8) Securing the provision of services for the common good and the protection of Clients.
9) The potential to execute the project in compliance with the Special Framework for Spatial Planning and Sustainable Development for R.E.S.
10) The compatibility of the project with the National Action Plan”

Further in Para 2. of the same article the procedure is described as follows:

“The R.A.E. (Regulatory Authority for Energy), before issuing its decision, may collaborate with the Manager of the System or the Network or the NonInterconnected Islands for the initial determination of the manner and point of connection of the station to the System or the Network. This determination is made within (20) days from the date R.A.E.'s query is submitted to the Manager without constituting a commitment by the Manager or the R.A.E. for the existence of available electrical space for issuing the Connection Offer. The R.A.E. examines if the criteria mentioned in Paragraph 1 are met and decides to issue or not a production license within two months from the application submission date, providing the application folder is complete, otherwise, from its completion. The folder is considered complete if no additional information is requested of the applicant in writing within thirty days of its submission. The decision is published on R.A.E.'s web
page and it is forwarded to the Minister of Environment, Energy and Climate Change by the R.A.E. and is published promptly in a daily newspaper with national circulation with responsibility of the beneficiary. The minister ex officio investigates its compliance with the law within twenty (20) days from receiving it. Within fifteen days of publishing the decision on the R.A.E web page, anyone with a legal stake in it may appeal against it, to challenge its lawfulness. The Minister passes judgment on the appeal within twenty days from its submission to the Ministry. If this period passes without any action the appeal is considered to have been rejected. The licensing process is halted until the lawfulness investigation is completed. Following the completion of the lawfulness investigation, the decision of the R.A.E. is entered in the register kept by the Independent Office for R.E.S. of the Ministry of Environment, Energy and Climate Change.”

**What is the Lifetime of the production license?**

According to Para. 4 of Art. 2 L. 3851/2010 Article “The license to produce electrical energy from R.E.S. and from C.H.P. is granted for up to twenty five years and may be renewed up to another 25 years. If within thirty months of obtaining the production licence no installation permit is issued, the production license automatically loses its validity with the publication of a certification decision of R.A.E”.

**Which projects are exempted from obtaining a product licence?**

Though, it is important to note that according to Art. 4 Para.12 L. 3851/2010 there are some projects that are exempted from obtaining a production license and any other certification decision, these are:

“physical or legal persons who produce electrical energy from the following categories of R.E.S. facilities:

i) Geothermal stations with installed capacity smaller than, or equal to half MW.,

ii) Biomass, biogas and biofuel stations with installed electrical capacity smaller than or equal to one MW....”

**How much is the price of biomass?**

<table>
<thead>
<tr>
<th>€-MWh</th>
<th>Interconnected System</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biomass ≤ 1MW</td>
<td>200</td>
</tr>
<tr>
<td>1MW &lt; Biomass ≤ 5MW</td>
<td>175</td>
</tr>
<tr>
<td>Biomass &gt; 5MW</td>
<td>150</td>
</tr>
<tr>
<td>Biogas ≤ 2 MW</td>
<td>120</td>
</tr>
<tr>
<td>Biogas &gt; 2 MW</td>
<td>99.45</td>
</tr>
<tr>
<td>Biogas from Biomass ≤3MW</td>
<td>220</td>
</tr>
<tr>
<td>Biogas from Biomass &gt;3MW</td>
<td>200</td>
</tr>
</tbody>
</table>

**What are the advantages investing in Biomass, Biofuels and Geothermal Energy?**

Biomass and biofuels market is highly funded by the EU and the Greek Government itself. Moreover, investors will find a wide range of opportunities in both the biomass and
biofuels markets. The main advantages of investing in biomass and biofuels in Greece are the:
1. Abundant raw materials
2. Agricultural sector equals 5.2% of GDP vs. 1.8% EU average
3. High feed in tariffs
4. Binding national commitments in biofuel use
5. Favourable, long-term legislative framework, ensuring investment reliability

Today Greece has managed to reach the EU target and substitute the 5.75% of diesel with biodiesel. Greece lies in a geographic position that is favourable to geothermal resources therefore, this figure and only is quite attractive for investors. Low temperature geothermal resources are found at the plains of Macedonia-Thrace in addition a vicinity of the 56 hot springs found all over Greece. At present, geothermal resources in Greece are used primarily for greenhouse heating, in spas and in generate thermal power but the widespread use of geothermal heat pumps is becoming a booming market. However, lower temperature geothermal resources were found just a few meters below the ground surface which places the sector in a high investing position as the use of geothermal energy can be expand in more uses i.e in heating and cooling of water for domestic use.
Solar PV Greek legal framework

The latest legislation about Photovoltaic and Renewable Energy Sources adopted by the Greek Parliament last May 2010 (N. 3851/2010, ΦΕΚ 85A, 4-6-2010), simplifies some of the procedures of the previously existing licensing regime. The law aspires to enable Greece to be provided nation-wide with electricity stemming from photovoltaics (up to 2020) up to a percentage of 40%.

Certain provisions of the abovementioned law were amended by the most recent Law 4001/2011, in force as of 22nd August 2011. Apart from these, more general provisions, specific procedures are provided for in the Licensing Regulation by the National Regulatory Authority (R.A.E.) and also in certain Ministerial Decisions (such as 9154/14.04.2011 on the prerequisites to implement a photovoltaic station on land and buildings) as well as important internal circulars (such as Υ.Α.Π.Ε./Φ1/οικ.26928).

What are the necessary steps of the licensing process?

An investor aiming to operate a photovoltaic station of ≥1 MW should follow the steps below:

- Apply to the National Regulatory Authority (RAE) for a Production License
- Once the Production License is acquired, apply to the competent Department of the Region for an Installation License (includes Approval of Environmental Conditions)
- Get a permission to proceed to minor-scale-interventions by the Department of Urban Planning.
- Apply to the System Operator for grid connection
- Sign a contract with the System Operator (HTSO) for selling electricity to the grid → Install PV system
- Apply to the competent Department

Which is the competent Authority for the issuance of the Production License?

The Production License is issued by the National Regulatory Authority (RAE). The NRA examines if the criteria provided for in the Law are met and decides whether to issue or not a Production License within 2 months from the application submission date, provided that the application folder is complete, otherwise, from its completion. The competence of the Minister of Environment, Energy and Climate Change (MECC) consists of an own-motioned checking of legitimacy within twenty (20) days from
receipt of the file. This own-motioned checking practically means that the MECC is entitled to cancel the License issued by the NRA in case the latter has been issued in breach of the applicable law provisions. Upon the conclusion of the control by the MECC the License of the NRA is published in a special Registry kept by the newly established authority for RES within the Ministry. The Production License is valid for up to 25 years and can be renewed for another 25 years. If the Installation License is not issued within 30 months of the issuance of the Production License, the latter is being automatically revoked.

Exceptions from the Production License
Exceptions can be granted up to the point of time when the said license is issued, for stations meant to be operated by farmers up to 100 KW, as well as for stations which are being expressly exempt from the obligation to possess a Production License. Moreover, according to the new Law, a Production License or any other declaratory decision (known as “exception”) is no longer required for photovoltaic systems up to 1 MW.

Installation License
Upon issuance of the Production License, the investor shall simultaneously a) apply to the Grid Operator for connection quotation, b) apply to the competent authority for an Approval of the Environmental Conditions of the project (E.P.O.) and c) apply for a permit from the Forestry Department, if required.
Within 4 months of the submission of the relevant application the competent Operator will issue the connection quotation, which becomes binding from the point of time at which either the EPO or the exemption decision are issued (see below for more details). Within 45 working days (at the latest) of the submission of the relevant application, the General Secretariat of the Region issues the Installation License. If no such license is being issued, the General Secretariat of the Region shall issue a declaratory decision, explaining why he could not issue the said license and puts over the file to the Minister of Environment, Energy and Climatic Change, who shall issue the said decision within 30 days upon receipt of the file. The Installation License is valid for 2 years and can be renewed once for another 2 years.

Approval of Environmental Conditions (E.P.O)
After receiving the Production License from the NRA the investor shall apply for the issuance of a Decision of Approval of Environmental Conditions (E.P.O.), in order to be granted an Installation License. The application shall be followed by a complete folder and an Environmental Impact Statement (E.I.S.).
The competent authority examines the environmental impacts and the proposed mitigation measures and issues its opinion on whether to issue or not an E.P.O. decision within four (4) months from the time the folder was consider complete. This decision on environmental compatibility (E.P.O.) is valid for 10 years and can be extended twice for the same period of time, if a relevant application is submitted up to 6 months before the expiration of the said decision.

Operation License
The competent authority for the Operation License is the same as the Installation License. It is granted after an audit unit has confirmed that the technical conditions for the installation of the PV station have been followed. The Operation License must be issued within an exclusive period of 20 days and is valid for 20 years.

Licensing for Photovoltaic stations up to 500 KW
a. These stations are exempt from the prerequisite requirement of a Production License, as well as from the prerequisite requirement of an Installation and Operation License.
b. For PV-systems up to 500 KWP, installed on fields, the environmental licensing (E.P.O.) can be avoided as long as certain conditions are met. The District Administration can confirm that these conditions are met within 20 days. In general, an environmental licensing is required only when these systems are to be installed in NATURA areas, coastal areas (less than 100m from the coastline) and in fields close to another PV-plant which already has been licensed to produce electricity (and the total energy output exceeds 500 KWP).
c. The application for a connection quotation to the competent Operator is a sine qua non prerequisite.
d. Such stations may not be transferred before the inauguration of their operation.
e. Guarantee equal to 150 €/KW is payable before signature of the Power Purchase Agreement.

Licensing for Photovoltaic stations from 500 KW to 1 MW
a. These stations are exempt from the prerequisite requirement of a Production License as well as from the prerequisite requirement of an Installation and Operation License.
b. There is a requirement for an application for environmental licensing and for a connection quotation.
c. Such stations may not be legally transferred before the inauguration of their operation.
d. Guarantee equal to 150 €/KW is payable before signature of the Power Purchase Agreement.

How can a PV station be transferred?
The owner of a Production License, following a relevant decision by the RAE, may transfer his license to other natural or legal persons. Solar (PV) stations with installed power capacity smaller than or equal to one (1) MWp, are not allowed to be transferred before beginning of their operation. Such a transfer is only allowed to legal entities, as long as the total share capital of the company to which they are being transferred is held by the transferring physical or legal body.

How is the pricing of electric energy produced by PV stations carried out?
The pricing of electric energy produced by PV stations is carried out based on the provisions of Law 3851/2010 and Article 27A of law 3734/2009. The new feed-in tariffs (FITs) are guaranteed for 20 years and are adjusted annually by 25% of previous year’s consumer price index. According to the Law, the producers of electrical energy from PV systems are exempt from payment of the special tax.
Why should one consider investing in the photovoltaic sector in Greece?

First and foremost: Greece is generally associated with sunshine, being a Mediterranean country. But also, Greece’s Feed in Tariff system is really attractive, since electricity produced from PVs is sold to the Public Power Company (PPC-DEI) at fixed purchase prices agreed in advance and guaranteed for twenty years. The weather conditions in Greece, therefore, guarantee that the investment will be profitable. The FiT in Greece retains one of the most attractive rates among the other European countries. Amidst an unprecedented financial crisis, the Greek government has taken bold initiatives for the development of residential solar systems, offering not just generous financial incentives but also simplifying the licensing procedures. Any citizen, who wants to install a solar system with a capacity of up to 10 kilowatts on their roof, can do so easily, simply by visiting the local electricity company office. Fiscal incentives should not be neglected either: obtaining exemption from value added tax for all module and material costs should not be overlooked. Tax exemption is granted by the competent tax office.
Introduction

RES Projects’ transfer has been a highly contested subject both in market and in legal terms. The transfer may take place at any of the different stages of the licensing procedure or grid connection of the Project. The issue of transfer may arise before or following the issuance of the connection terms, the signing of the Grid Connection Agreement, and of the Power Purchase Agreement, as well as before or following its implementation and/or operation. Moreover, some RES Projects are subject to a production license (hereinafter “Projects subject to license”), whereas other RES Projects not (namely, geothermal up to 0,5MW, biomass, biogas, biofuel up to 1MW, photovoltaic up to 1MW, and wind farms up to 100kW, cogeneration up to 1MW, collectively hereinafter referred to as “exempted Projects”). The transfer of a Project can take place by a transfer of its production license, if required by the law, or by transfer of the shares of the company owning the Project (hereinafter “Project Company”). The transfer of anticipation rights for licensing or connection to the grid is not met so far in practice.

Transfer of licenses before the adoption of law 3851/2010

According to previous law 3587/2007 (Official Gazette A’ 152/10.7.2007), the administrative act of exemption from the licensing obligation was not transferrable before the implementation of the Project. This prohibition was, however, only applicable to requests submitted after 10.7.2007 (so RAE’s decision no. 2/2008). Moreover, according to law 3734/2009 (Official Gazette A’ 8/28.01.2009), as amended, production licenses and exemptions concerning photovoltaic plants could not be transferred before the beginning of operation of the Plant. Exceptionally, the transfer was allowed if the share capital of the company to which the transfer was made, was entirely (100%) owned by the transferring company. Following the adoption of law 3851/2010 (Official Gazette A’ 85/4.6.2010), the transfer of production licenses, after an approval by RAE, is allowed.

Approaching the transfer of a RES Project

A thorough legal, financial, and technical due diligence of the RES Project should take place before signing a transfer agreement. As regards the legal due diligence, it should include the legal due diligence of the Project itself, i.e. the examination of the Project’s licenses if it is a Project subject to license, the connection terms by PPC S.A., the
environmental terms and other permits by competent authorities, if required by law, the Grid Connection Agreement, the Power Purchase Agreement, already signed with PPC S.A. and/or HTSO S.A. etc. In addition, the site of installation of the Power Plant should also be the object of a legal due diligence (land property’s titles’ review in the local land Registry and the Cadaster).

Legal due diligence of the Project Company

A legal due diligence of the Project Company, with respect to its legal establishment and operation in Greece, is also recommended before the purchase of a RES Project. It is of particular importance to clarify whether the Project Company is already bound by contractual commitments, i.e. an EPC contract, whether the Project Company is also the owner of Projects other than the one to be transferred, etc.

Protection of a future RES Project’s purchaser during the due diligence period

During the legal, financial and technical due diligence period, which may last from some days to few months and create significant costs, both parties should be protected: the purchaser primarily with regard to the exclusivity of negotiations, and the seller with respect to confidentiality issues. For this reason, the signing of a preliminary agreement is recommended, which may range from a more loose commitment, such as a Letter of Intent, a Non-Disclosure Agreement, or a Memorandum of Understanding, to a more binding one, such as a share transfer pre-agreement. If possible, the terms of the final transfer agreement should be agreed between the parties already at this stage.

Transfer of a production license

The owner of a production license may transfer his license to another person, individual or legal entity. Necessary for this transfer is a decision of RAE. In order to issue this decision, RAE examines whether criteria (a), (g), and (h) of article 3 para. 1 of law 3468/2006 (Official Gazette A’ 129/27.06.2006), as amended, are fulfilled. Moreover, according to the new Regulation on Electricity Production Licenses, Ministerial Decree F1/14810/4.10.2011 (Official Gazette B’ 2372/25.10.2011), the production license’s transfer must be compatible with competition law.

What does RAE examine in order to allow the production license’s transfer?

RAE ensures that the abovementioned criteria (a), (g) and (h) are met, before issuing its approval:

- Criterion (a) concerns national security,
- Criterion (g), as specified by criterion (f) of article 13 of the new Regulation on Electricity Production Licenses, refers to the ability of the future owner or of his shareholders/partners to implement the Project. This ability is assessed on the basis of his financial, scientific, and technical capacity and his ability to ensure the required funding from personal capital, bank financing of the project, capital from business participation, or a combination of the above, with respect to the financial capacity of the future license holder, taking into account that participation of legal entities shall be governed by the principle of transparency, and
Criterion (h) refers to the safeguarding of the provision of public utility services and the protection of customers.

The examination by RAE of the most significant criterion (g) regarding financial ability means practically that the future owner must provide a detailed business plan for the Project as well as specific documentation proving the financial ability to cover part or the entire Project’s budget through equity and/or bank financing, participation in the company capital, or funding.

**Administrative procedure for the transfer of a production license**

The holder of the production license files a request before RAE regarding the license's transfer, together with a statement of acceptance of the said transfer by the individual or legal entity to whom the license is to be transferred. The above application and statement have to be accompanied by the data and information listed in Annex 5 of the new Regulation on Electricity Production Licenses (i.e. data of the license's holder, data of the license, data of the person to whom the license is to be transferred, business plan and overall business plan of the future license holder, proof of the financial ability of the future license holder, including equity and/or bank financing, subsidies, funding or other ways of financing). RAE may request the licensee or the future license holder to provide, within a specific time frame, any additional information and data that RAE may consider necessary. If the deadline expires, the application is deemed incomplete, and RAE rejects the transfer application.

If the file is complete, RAE publishes a summary of the submitted application on its website. Parties with a legitimate interest may submit to RAE their justified objections, within fifteen (15) days starting from the publication date. Any such objections need to be accompanied by all documents and information necessary for supporting the justification. RAE notifies to the applicant the objections raised to both the present and the future license holder, who have the right to respond to these objections. Following the expiration of the 15-day deadline, RAE proceeds to the examination of the transfer request, in accordance with the above mentioned criteria.

**Transfer of shares of a Project Company with a production license**

It is also possible to transfer the Project Company's parts or shares, in order to transfer a RES Project subject to license. In that case, the production license may be amended following the licensee's request, if the individuals or legal entities stated in the production license, as the ones securing the funding for the implementation of the Project, are changed. The same is valid if the participation in the share capital of the licensee is changed, but only if the individuals or legal entities changed are the ones specified in the production license, as the ones securing the financing of the Project.

**Administrative procedure for the modification of a production license following to the Project Company’s share transfer**

The applicant has to submit to RAE a request explaining the details of the requested change together with all necessary documents. Subsequently, RAE publishes a summary of the submitted amendment application on its website. If no justified objections are raised within fifteen (15) days from the publication, RAE examines the modification
application under the same criteria (a), (g) and (h), and decides whether to amend the production license or not. The licensee may preliminarily notify RAE of his intention to transfer the company’s shares and request the amendment of the license following RAE’s approval, or, alternatively, transfer the shares before requesting RAE’s approval for the amendment of the production license.

Share transfer in the Project Company without amendment of the production license
A certificate from the Secretariat of RAE is sufficient when the participation in the Project Company’s capital is modified only up to 20% and only once. The same certificate is also sufficient even when the modification of the Project Company’s capital participation is total (100%), if the individuals or legal entities participating in the share capital are different from those that ensure the financing of the Project. Finally, no amendment is necessary when the Project Company changes its company name, or its company form. The certificate is issued by RAE within ten (10) days from the date the applicant submits the respective notification of modification, together with any necessary supporting documentation.

Transfer of shares of Project Companies with exempted Projects under conditions
According to law 3851/2010, RES Projects exempted from the licensing obligation still cannot be transferred before the beginning of operation of the Plant, unless the transfer is made to a 100% subsidiary. However, following a share transfer and a change in the capital participation, the Project Company remains the same legal person with the same tax registration number, and no change in the company name is incurred, unless the Project Company is a personal company. In that case, the future purchaser should contact competent authorities (esp. HTSO S.A. and PPC S.A.) regarding the possibility of amendment of the connection terms, the Grid Connection Agreement and the Power Purchase Agreement, with respect to the producer’s name. The above do not seem to apply in the case of individuals, unless the transfer is made to a company wholly owned by the individual.

Is there a difference between the transfer of photovoltaic Projects and the transfer of wind energy Projects? What about the transfer of Fast Track Projects?
Laws 3468/2006 and 3851/2010, do not seem to differentiate between photovoltaic Plants and other RES Projects, especially wind farms. Moreover, Projects developed under the Fast Track procedure are also subject to the legal framework described above (regarding Projects subject to license).

Private financing and securities. Can the Producer assign his claims against the System Operator to a third financing party as a security?
The Power Purchase Agreement, signed between the System Operator (HTSO S.A. or PPC S.A.) and the producer, stipulates in article 18 of the Model Agreement, that any assignment and transfer of the rights and claims arising thereof, in whole or in part, by the producer to a third party, shall not be permitted without the previous written consent of the Operator and the relevant notification to the Ministry of Environment, Energy and Climate Change and RAE. If no such permission is given, the Agreement may
be unilaterally terminated by the Operator. The exact conditions and criteria for granting this permission have not yet been clarified by the System Operator.

**Bank financing and assignment of claims against the System Operator**

Such permission is not required, however, with regard to the assignment and transfer of the financial claims of the producer arising by the Power Purchase Agreement to a) one or more Greek or European first-class banks, and to one or more leasing companies, which will fund the construction and operation of the Plant, and/or b) any company connected with the producer, involved with the construction and/or the operation of the Plant.

If this is the case, a notification regarding such assignment and transfer has to be made to the System Operator, to the Authority issuing the installation license, and to RAE. Moreover, para. 5 of same article provides that if the ownership of the Plant is transferred, the new owner assumes the rights and obligations of the producer.

**Other securities**

Apart from the assignment of claims against the System Operator, third financing parties may agree with the producer to participate in the share capital, or to set up a pledge on the Project Company’s shares. A mortgage or a prenotation of mortgage on the land property where the Plant will be installed is also a possible security, as well as a quasi-lien on the Power Plant itself. Finally, it is important to obtain personal guarantees from the partners of the Project Company.
INTRODUCTION

The petroleum market in Greece is facing significant issues, mostly due to the distortion of competition, smuggling and lack of substantial development in recent years. However, the market offers challenging opportunities to investors provided that much awaited changes - at both a regulatory as well as a business practice level - are followed through. The below report aims to present a brief, yet concise overview of the various aspects (sectors, risks, challenges, opportunities) of the Greek petroleum market.

PART 1- UPSTREAM

The upstream sector, the searching for potential underground or underwater oil and gas fields, drilling of exploratory wells, and subsequently operating the wells that recover and bring the crude oil and/or raw natural gas to the surface is not developed and opportunities are now rising.

What is the legal framework governing the search and exploitation of hydrocarbons?

Law 2289/1995 as amended by new Law 4001/2011 constitutes the applicable legal status regarding the research and exploitation of hydrocarbons.

The right for search, research and exploitation of hydrocarbons existing in land, below lakes and underwater on which the Hellenic Republic correspondingly exercises its dominance or dominant rights according to the provisions of the United Nations Convention on Law of the Seas, as such was ratified by virtue of Law 2321/1995 exclusively belongs to the State and its exercise always regards the public interest. The management of the said rights on behalf of the State is exercised through the Hellenic Hydrocarbon Resources Management (HHRM) established by virtue of new Law 4001/2011, actually in formation.

Which are the methods of concession of hydrocarbon search, research and exploitation rights?

The search right for hydrocarbon, as well as the license for the execution of seismic or geophysical and geological non-exclusive research methods by specialized companies (Non-exclusive seismic surveys)\(^1\), is granted by virtue of a decision by the Hellenic Hydrocarbon Resources management (HHRM), approved by the minister for the Environment, Energy and Climate Change and for a term of up to eighteen months.

The research and exploitation rights are granted under the following procedures:

a) either following a declaration, for areas below lakes and underwater\(^2\), approved by the Minister for the Environment, Energy and Climate Change, published in the Government

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1. On 02.09.2011 an Announcement for an International Public Invitation for the participation in seismic research projects for obtaining non-exclusive data within the sea zone in Western and Southern Greece.

2. “Underwater areas” are the bottom and subsoil of domestic waters, the coastal zone, the continental shelf and the exclusive economic zone (upon declaration thereof) up to the distance of 200 nautical miles from the
Gazette and also sent for publication to the Official European Union Journal. The deadline for the submission of offers is determined in the declaration and cannot be shorter than ninety (90) days from the last publication.

b) either following the application by an interested party for an area not included in the declaration under a) hereinabove. HHRM, provided the application is accepted, issues a declaration approved by the Minister for the Environment, Energy and Climate Change, published in the Government Gazette and also sent for publication to the Official European Union Journal. The deadline for the submission of offers by any other interested parties is at least ninety (90) days from the last publication.

c) either through an open invitation (open door) for the submission of interest in case that the area under discussion is available on a permanent basis or has been the object of a previous procedure which did not conclude with the execution of a lease or production distribution agreement or has been abandoned by the contractor, in case the latter has withdrawn from or terminated the agreement. The minister for the Environment, energy and Climate Change by virtue of an announcement published in the Government Gazette and sent for publication to the Official European Union Journal, communicates the said areas along with the minimum basic conditions of the concession, as well as any specific information related thereto. The interested parties may submit an offer for concession for more than one area. The offers are submitted until the last workday of the first and second semester of each calendar year.

In a time period of thirty (30) days following the end of the semester for the specific area, the Minister for the Environment, Energy and Climate Change announces that the specific area is exempt from the areas available as above, since it is under the concession process. The offers are evaluated and the one most profitable to the State is selected, following negotiations with the interested parties and based on the invitation criteria.

Comments

The new law introduced for the first time in Greece, two widely used international practices: a. The Non-exclusive seismic surveys and b. The Open Door, which shall offer attractive areas of our country through transparent procedures in the international oil market, thus sending a powerful message to the international markets by attracting the interest of the oil industry after a long absence from this field, with the simultaneous creation of work places. However, an exhilaration of the general research timetable and consequently of the commencement of hydrocarbon production in case of discovery is required, given that Greece has been out of the oil market in the fields of research and production for the past decade and thus, in order for the effort to succeed, the technical preparation and promotion of the competition must be the best possible, so as to ensure the participation of reliable oil companies and for the success of the realization of business plans.

base lines from which the range of the coastal zone is measured. In case of lack of border definition agreement with neighboring countries whose coasts are adjoining to or across Greek coasts, the outer border of the continental shelf and the exclusive economic zone (upon declaration thereof) is the middle line, each point of which is at an equal distance from the closest points of the base lines (both continental and island) from which the range of the coastal zone is measured».

3. Today areas are being selected (Patras bay, Ioannina), which were returned to the Greek State by the joint ventures that held the rights during the previous round of concessions and for various technical and corporate reasons did not complete the research projects. Also selected is the Katakolo area, where a small sea oil deposit has been detected, for which no offer was submitted during the previous round of concessions (1997).
PART 2 - DOWNSTREAM

A. GENERAL APPROACH

What is the general structure of the petroleum products’ market today?

In the refining sector only two companies\(^4\) are active (HELLENIC PETROLEUM, MOTOR OIL) which produce homogeneous products and which are mainly targeted to the domestic market.

In the trade sectors there are approximately twenty (20) companies activated, which supply the service stations, the large consumers and the end consumers and which possess their own storage spaces.

In the field of retail distribution there are approximately 8,000 active service-stations, the majority of which bears the trademark of a trading company, while there are approximately 600 independent service-stations\(^5\), as well as a small number of service-stations located in Super Markets and exclusively supplying the end consumers.

What is the applicable legal framework regulating the petroleum market in the Greek territory?

The petroleum products’ market is mainly governed by Law no. 3054/2002 «Organization of the Petroleum Market and Other Provisions», as amended, while the terms and conditions, as well as the other parameters, which define the applicable petroleum policy in Greece, are specified in individual laws and the License Regulation.

B. THE REFINING SECTOR

Which are the entry conditions for an investor in the refining sector and how does competition operate?

A new investor, in order to enter the petroleum refining sector must a. be a legal entity in the form of a Societe Anonyme (incorporation) or equivalent thereof, seated in one of the member states of the European Union and b. hold a permit by the Administrative Authority, which is granted following a decision by the Minister for Environment, Energy and Climate Change.

In the petroleum refining market, the development of competitive activities by new entry companies is reduced, given the concerted practices of the two large companies (HELLENIC PETROLEUM, MOTOR OIL) exclusively active in the field, having developed strong connections also due to their participation in the “Athens Airport Fuel Pipeline Company S.A. (AAFPC)”. Meanwhile, the investment cost is reported as quite high, as it is accompanied by increased operating costs (infrastructure) and its amortization often turns out to be difficult and of a long-term.

What is the pricing policy adopted by the refining companies?

The pricing method used by refining companies consists of the calculation of the average of high prices for four days (three last days including the delivery date) from the Platt’s price index for FOB (Free of Board or Freight on Board) cargos in the Mediterranean. The costs of transportation, of maintaining security reserves, of trading and storing are added to the above prices. The final prices with which the trading companies are burdened during the

\(^4\) The said companies’ refining ability amounts annually to approximately 20 m. metric tons.

\(^5\) It should be noted that partnerships, joint ventures and independent service-stations may address the refineries without the mediation of the trading companies.
supply of fuels from the refining companies present a slight deviation due to the discount policy followed by the latter. Consequently, the pricing system is directly affected by the upward or downward changes of international products in the Mediterranean.

**How is the petroleum products’ ex – refinery price set?**

The refinery price is defined as the price paid by the trading companies which procure fuels from the refining companies. The setting of the petroleum products’ ex – refinery price is a function of mainly three parameters and specifically of a. Platt’s index highest prices, b. refinery premium and c. discounts granted by the refining companies.

**C. THE TRADING SECTOR**

Which are the entry conditions for an investor in the trading sector?

For the entry in the petroleum trading sector, there are five (5) categories of permits provided for a. for all liquid fuels in the domestic market (A), b. for tax-free shipping (B1) or aircraft (B2) fuels, c. for liquefied petroleum gas – LPG (C) and asphalt (D), only granted to legal entities in the form of a Societe Anonyme (incorporation) or an equivalent thereof, seated in a member state of the European Union, with a minimum share capital depending on the permit type, while the possession of private storage spaces, owned or leased, is also required.

Which are the main characteristics of the trading sector competition-wise?

The trading sector does not demonstrate a particularly high degree of concentration. Only 60% of the market belongs to the four largest trading companies, while 90% thereof is divided between 13 trading companies. An investor’s entry in this sector does not face particular obstacles, given the low degree of integration. Any difficulties are mostly due to the security reserves’ maintenance policy and mainly regard bureaucratic matters (licensing etc).

How is the petroleum products’ price set at a wholesale level?

In the trading sector, the price of petroleum products is set by the following parameters: a. refinery price, b. special consumption tax, c. contribution in favor of R.A.E. (0,16€/1.000L gas – diesel), d. special contribution for the petroleum products fund for problem areas (1% of the refinery price), e. special D.E.T.E. duty (0,5% on the total of the above) and f. VAT 23%, except for certain areas. However, the final price for the supply of petroleum products to service-stations is also set by the discounts granted by the trading companies, which vary for high to low levels depending on the area. Meanwhile, there are companies with no discount policy, which consequently invoice their service stations with purchase cost plus a certain profit. Finally, the transportation cost depending on the place of delivery of the petroleum products and burdened with additional fare (flag fall) also appears as a separate factor in setting the final wholesale price.

**D. THE RETAIL SECTOR**

Which are the entry conditions for an investor in the retail sector?

The entry of an investor in the retail sector is conditioned upon the possession of a permit for establishing and operating a liquid fuels’ service station, granted to individuals or companies under any legal form.

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6. It should be noted that the petroleum products’ transport is conducted mainly by private and public tanker trucks. In Greece, the transport of liquid fuels is mostly conducted by public tanker trucks, while the transport by private tanker trucks is limited due to bureaucratic problems.
Which are the main characteristics of the retail sector competition-wise?
Wholesale prices\(^7\) are unilaterally determined by the trading companies and are not part of an agreement between the companies and the service-station proprietors as to their calculation method. Prices vary based on personal discounts.
The agreements executed between trading companies and service-station proprietors contain significantly burdensome terms (“leonine conventions”), resulting to the excessive binding of service-station proprietors, a fact that has a direct impact to the final setting of fuel prices and prohibits mobility from one company to another.
Retail has become particularly difficult since the credit policy change of the trading companies, which reduced to half the credit period for service-station proprietors (20 days instead of 40).

How is the price of petroleum products set at a retail level?
The so-called pump price is a function of three (3) parameters and in particular of a. the sale prices of products by the refineries (31%), b. the imposed taxes – duties (60%) and c. the trading margin of the company and the service-station proprietor (9%), which is a function of domestic competition conditions.

E. THE OBLIGATION FOR THE MAINTENANCE OF PETROLEUM RESERVES
What does the obligation for the maintenance of petroleum reserves consist of?
In order for the coverage of the country’s needs at times of crisis, the obliged parties must maintain exclusively within the Greek territory security reserves for all products (light, medium and heavy fractions). The quantities used for covering the obliged parties’ operational needs are admeasured to the above security reserves, as well as the quantities transferred by ships within the Greek territory for the supply of the facilities of refining or trading permit holders within the Greek territory.
The obligation for the maintenance of security reserves burdens a. importers of crude oil, petroleum products or semi-processed products for the domestic market\(^8\), b. large end consumers who import products for self-consumption\(^9\), and c. refining permit holders. Additionally, there is a provision for the ability of the obliged parties to assign the maintenance of the reserves they are required to hold to a third party.\(^10\)
The Minister for the Environment, Energy and Climate Change is the competent authority for the monitoring of the maintenance of security reserves obligation. By virtue of a decision thereby, following an opinion by the R.A.E. the Regulation for the Maintenance of Security Reserves is issued, which contains the terms under which the supervision is exercised and the monitoring is conducted.

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7. Wholesale price is the price payable by the service-station proprietor to the trading company for the supply of fuels.
8. The reserve level amounts to 90/365 of the net imports of the previous calendar year.
9. The reserve level also in this case amounts to 90/365 of the net imports of the previous calendar year, with the ability of modifying the limits by virtue of a decision by the Minister for the Environment, Energy and Climate Change.
10. The related agreement is of a minimum one-year term, exclusively refers to the maintenance of security reserves and a copy thereof is filed with the Minister for the Environment, Energy and Climate Change. Moreover, the maximum fee limit for the provision of the said service may be set by virtue of a ministerial decision, taking under consideration the operational and financial costs of maintaining reserves, which includes the profit of the person providing the storage space.
Initially, it appears that Competition is not operating well. The issue of smuggling undoubtedly constitutes one of the most crucial structural problems of the oil sector. It is necessary to rationalise the existing legal framework accompanied by the direct taking of measures for the minimizing of smuggling cases, perhaps through the promotion of a stricter audit system, mainly at the stage of fuel distribution and sanction implementation in cases of violation detection.

According to Law 2773/1999 as amended, which was issued in compliance to European directive 96/92 on the modernization of energy markets in Greece, the Regulatory Authority for Energy (R.A.E.) was established as an independent administrative authority. R.A.E. has no auditing or judicial competence, its objective consists solely of the promotion of free healthy competition in the energy market through constant monitoring of prices, and the general energy market operation and issuance of permits, while it simultaneously informs and assists the investors and the consumers.

In conclusion, solving the petroleum market problems is deemed as a highly crucial issue. The petroleum market needs to adopt new methods and practices, in order to become more attractive and to form the most profitable field for the realization of investment plans. The upcoming increase of Natural Gas in Greece’s energy balance constitutes a visible risk for the petroleum market.
Give a brief overview of the legislative framework for the Greek electricity sector and identify any trends

Greece has recently transposed the provisions of the so-called 3rd EU Energy Package into Greek law by statute 4001/2011. This new piece of legislation also reflects obligations undertaken by the Greek government pursuant to the Memoranda of Understanding signed between Greece, IMF, ECB and the European Commission. The new statute repeals statute 2773/1999 which, as amended to transpose the provisions of the 2nd Electricity Directive 54/2003/EC, had failed to bring about liberalization and challenge the monopolistic hold of the market by the Public Power Corporation (PPC). This was so despite the introduction of an obligatory day-ahead wholesale market (modeled after the ‘pool model’ used in the UK during the 1990s) which allowed, yet to a very modest degree, independent power producers, traders and suppliers to enter the Greek market. Of late, Greece has been requested to further open up the market and take measures that will better promote competition through the sale of lignite-fired and hydroelectric power units which are now exclusively owned by PPC.

Greece has further taken measures to promote renewable energy sources (RES) by amending the key legislative instrument (statute 3468/2006) in 2010. Indeed, statute 3851/2010 sets out the national targets for RES power production in line with Directive 2009/28/EC so that by 2020 RES power production covers 20 per cent of the gross final energy consumption of the country. In line with its increasing focus on RES, the Greek government, supported by the EU Commission, has been recently developing the project “Helios” which aims at the establishment of large-scale photovoltaic (PV) plants in state-owned properties for the purpose of selling the generated power primarily to EU member states.

What is the organizational structure for the generation, transmission, distribution and sale of electricity in Greece?

The Greek market is split into two different systems: the mainland grid and the ‘non-interconnected islands’, the latter including the islands of the Aegean Sea, Rhodes and Crete and having their own autonomous networks. Although the islands of the Aegean Sea and Rhodes fall under the notion of micro-isolated systems, Greece has failed to successfully request derogation pursuant to the 2nd Energy Package. Nonetheless, under the former regime of statute 2773/1999, all non-interconnected islands were exempted from market opening. Statute 4001/2011 partly corrects this incompatibility by acknowledging that customers in Crete are eligible to choose the supplier of their choice and by appointing the distribution system operator (DSO) to exercise powers in relation to the operation of the power market in the non-interconnected islands.
Competition is open to electricity generation and supply in mainland Greece and as of 1 July 2007 all consumers including households have become eligible customers. Despite the opening up of generation and supply, a fully competitive market is not in place. PPC faces some modest competition in certain fractions of the supply market by alternative suppliers. Part of this failure to open up competition is attributed to PPC’s regulated tariffs which (despite recent amendments) are not cost-reflective and entail cross-subsidization between different types of customers.

PPC owns the transmission grid and the distribution network. Prior to the entry into force of statute 4001/2011, grid management had been assigned to the transmission system operator which has been known as DESMIE. DESMIE is a company partly owned by PPC (by 49%) and the Greek State (by 51%) and operates under a model resembling, to some extent, the ISO model of the 3rd Energy Package.

Greece has eventually opted to implement the ITO model and, pursuant to statute 4001/2011, PPC has now established a 100% subsidiary (ADMIE) which will own, operate and exploit the transmission grid by 3 March 2012. Trading in the form of selling and buying electricity at a wholesale market is undertaken by DESMIE through the day-ahead market. Following the establishment of ADMIE, DESMIE will not be liquidated but will be restructured to exclusively act as the wholesale market operator (LAGIE).

Under the former regime, DESMIE was to operate the distribution network in accordance with the provisions of the 2nd EU Energy Package. However, the transfer of management to DESMIE never took place despite a statutory provision to this effect. Under the new regime of statute 4001/2011, the distribution network will remain the direct property of the PPC, yet its operation, exploitation and maintenance will be assigned to another 100% subsidiary of PPC (ESMIE). ESMIE will also operate the ‘non-interconnected islands’ wholesale market.

The day-ahead market has become obligatory for all power producers and suppliers who want to buy or sell electricity the following day. The EU commission has addressed its concerns regarding Greece’s failure to allow the conclusion of bilateral contracts, which is inconsistent with the target model for the implementation of national markets into a single European power market. However, the mandatory pool system is inevitable as long as PPC retains its monopolistic hold on cheaper energy sources (such as lignite and hydropower).

**Which body monitors the power market and what are its powers?**

Power market regulation and monitoring is exercised by RAE which has been established as an independent administrative body pursuant to statute 2773/1999. Statute 4001/2011 has further enhanced RAE’s autonomy and functional independency vis à vis market stakeholders and the government, in compliance with the provisions of the 3rd Energy Package. RAE is vested with the following powers:

- fixing the methodologies of transmission and distribution tariffs;
- monitoring the operators of the transmission and distribution systems and of the wholesale power market;
- monitoring the market to ensure competition, market transparency and customer protection;
- cooperating with the regulatory authority or authorities of the EU member states and with ACER on cross-border issues;
- certifying ADMIE as a TSO which is effectively unbundled under the ITO model of the 3rd Energy package;
- approving before their entry into force all network and wholesale market codes and issuing all necessary secondary legislation (exempt for the Code of Suppliers and the Licensing Code which are issued by the Minister of Environment, Energy and Climate Change);
- determining third party access to cross-border interconnections;
- handling complaints regarding market stakeholders’ infringements, etc.

Give a brief overview of the licensing procedure for the construction and operation of power generation facilities

The construction of a power plant and the generation of electricity require a generation license granted by RAE (article 132 of Statute 4001/2011 and article 3 of statute 3468/2006 regarding RES plants) pursuant to the Licensing Code of 2001 and, for RES and CHP power plants, the Licensing Code of 2011. However, a generation license does not release its holder from the obligation to acquire other licenses or permits stipulated in other pieces of legislation (for example, construction permits, installation and operation licenses, environmental permits, land planning permissions, etc). The law provides for certain exemptions to the obligation to obtain a license, primarily for small-scale plants.

Does government policy or legislation encourage power generation based on alternative energy sources?

Statute 3468/2006 on the generation of electricity from RES and from co-generation, which entered into force in June 2006, transposed Directive 2001/77/EC into Greek legislation and set out de novo the entire legal framework for RES and co-generation. To overcome the administrative barriers that have arisen in the process of operating a RES plant, statute 3851/2010 provides that the RES production license is henceforth an administrative confirmation of the project’s feasibility, namely an overall approval of the project’s technical-economic efficiency. Furthermore, under statute 3851/2010 the production license will no longer be granted by the Minister but by RAE. The new delegation of powers aims at reducing the overall time required for the issue of a production license to two months following the submission of a complete file by the applicant. In addition, the environmental licensing is no longer part of the procedure to obtain a production license but is granted at a subsequent stage. Indeed, RAE has already issued several production licenses that had been pending since 2007. Statute 3851/2010 further provides financial incentives such as new feed-in tariffs (excluding PV-generated energy, which is subject to the feed-in tariffs introduced by Statute 3734/2009).

What authorizations are required to construct and operate transmission networks and who is eligible to provide transmission services?

Pursuant to statute 4001/2011, ownership rights to the Greek transmission grid (ESMIE) will be transferred from PPC to a 100% subsidiary (ADMIE), following a corporate spin-off. Upon the completion of this procedure, ADMIE will own and exploit the grid and will have to operate in compliance with the ITO model of the 3rd Energy Package. To this
end, ADMIE must be certified by RAE which has already issued in its website guidelines regarding the certification procedure that must be concluded by 3 March 2012. However, it is questionable whether PPC’s spin-off and ADMIE’s staffing will be completed by then. ADMIE must issue a 10-year network development plan which is monitored by RAE in accordance with the provisions of article 108 of statute 4001/2011 (transposing article 22 of Directive 2009/72).

Statute 4001/2011 further provides that in case of a persistent breach by ADMIE, RAE may assign all or some of its tasks to an independent system operator appointed in accordance with article 13 of Directive 2009/72.

What are the rules on third party access and how are transmission and distribution services regulated?

Third party access to the transmission and distribution systems may be granted to licensed generators and suppliers or traders, to those exempted from the obligation to hold such licenses and to eligible customers. The terms and conditions for the provision of transmission services and access to the transmission grid are regulated in the Grid and Power Exchange Code (Ministerial Decision 8311/2005, as amended), which is intended to procure, inter alia, the non-discriminatory and objective use of the system. Although PPC had published a draft of the Distribution Code for public consultation, to date said Code has not entered into effect. The methodology used by the transmission and distribution system operators for determining their tariffs requires the prior approval of RAE (articles 15 and 140 of statute 4001/2011).

What authorizations are required for power supply and which authorities grant such approvals?

Article 134 of statute 4001/2011 introduces two different types of licenses for power trading: (a) a license to trade in the wholesale market and (b) a license to supply eligible customers. Both licenses are issued by RAE, in accordance with the Licensing Code of 2001, if the following conditions are met:

- The applicant must be incorporated as a societe anonyme or as a limited liability company
- The applicant must have adequate organizational and administrative structure to ensure the credible, prudent and proper conduct of power trading/supply; and
- The applicant must be financially sound.

The minimum registered share capital for wholesale power trading is €60,000, whereas for the supply of eligible customers €600,000. A person licensed to supply eligible customers is also eligible to trade power in the wholesale market but not vice versa.

Is there any tariff or other regulation regarding power sales?

As of 1 July 2007, all consumers have become eligible customers. Article 140 of statute 4001/2011 provides that suppliers are free to decide their tariffs/prices. Statute 4001/2011 further abolished the provisions of article 29 para 6 of statute 2773/1999, under which PPC’s medium and low voltage supply tariffs are subject to prior approval by the Minister of Environment, Energy and Climate Change following an opinion of RAE. However, the Supply Code (Ministerial Decision 4524/2001) still provides that PPC’s tariffs must be approved by the Minister following an opinion of RAE for as long as PPC
covers more than 70 per cent of the domestic electricity consumption, which is still the case today as PPC accounts for more than 90 per cent of domestic consumption. The European Commission has already addressed a reasoned opinion to Greece on this matter and independent energy retail providers have lodged an application before the Council of State arguing that PPC tariffs entail their exclusion from the market due to PPC’s policy of cross subsidies.

Are there any public services obligations provided by law?

Articles 57 and 58 of Statute 4001/2011 further introduced the following public services obligations (PSOs):

- A supplier of last resort who undertakes to supply power to customers for no more than three months, if said customers’ former supplier has stopped providing its services for reasons attributed solely to the provider’s fault (e.g. insolvency).
- A supplier of universal services who undertakes to supply power to household customers and small non-household customers (of maximum consumption of 25 kVA), if said customers are either unable to find their preferred supplier or have no interest in seeking one.

The supplier of last resort or of universal services is appointed following a public tender, which must be performed by RAE until 31.7.2012. If the tender is unsuccessful, RAE may appoint the supplier who has the largest market share in the respective section of the market. The new rules aim at introducing competition in relation to PSOs which are currently provided exclusively by PPC under non-transparent criteria and mainly though state regulated tariffs entailing cross-subsidies between different types of PPC’s customers.

Additional PSOs can be set by means of a presidential decree or ministerial decisions (e.g. with respect to social security benefits provided to vulnerable customers). The framework set by articles 55 to 58 of statute 4001/2011 sets the criteria for the imposition of such public services obligations in accordance with the EU acquis and in particular the well-known Altmark decision of the European Court of justice.

Are vulnerable customers determined by law?

The following customers are determined as vulnerable by article 52 of statute 4001/2011:

- Household customers who are affected by energy poverty as defined in said statute;
- Customers who themselves or their wives or their cohabitants who are under their custody are dependent on the continuous supply of power, such as customers in need of mechanical support;
- Elderly customers, i.e. customers who are over 70 years old and do not cohabitate with a person who is below 70;
- Customers facing serious health or mental problems and are thus unable to negotiate and handle their contractual relationship with their supplier;
- Customers located in isolated areas and in particular in the non-interconnected Islands and are entitled to be supplied with power under the same tariffs and terms as those enjoyed by customers in mainland Greece.
What rules apply to cross-border electricity supply, especially with regard to interconnection?

DESMIE regularly conducts auctions for the allocation and assignment of interconnection capacity rights for energy exports to Italy and for energy imports from countries north of the Greek border (Bulgaria, FYR Macedonia, Albania and Turkey) on a yearly, monthly and daily basis. DESMIE has recently submitted to public consultation the rules applicable for the 2012 auctions for transmission capacity allocation. The new rules aim at providing a transparent method of congestion management in accordance with the requirements of Regulation (EC) 714/2009. However, the rules applicable for the 2011 auctions are determined by the 2011 access rules determined jointly by the adjacent TSOs. In accordance with these rules, the Available Transmission Capacity (ATC) in interconnectors is offered in the form of Physical Transmission Rights (PTRs) or Commercial Transmission Rights (in the interconnection between Greece and Bulgaria). In connection with the Greece-Italy interconnection, CASC S.A. has been jointly appointed by the respective TSOs as the Joint Auction Office for the explicit Allocation of ATC.
Give a brief overview of the legislative framework for the Greek natural gas sector and identify any trends

Natural gas was first imported in Greece from Russia in 1997. Still today, Greece heavily relies on Russian gas (currently accounting for 57% of the overall gas imported into the country) and on long-term supply contracts. The country has been consequently categorised as an emerging gas market and was granted derogation from the implementation of Directive 98/30/EC until November 2006. Pursuant to statute 2364/1995, DEPA (the Greek public gas corporation) was granted the non-transferable right to import, transfer and sell natural gas in Greece, and undertook the construction and operation of the natural gas transmission network. Gradual liberalization of the Greek gas market was eventually promoted through statute 3428/2005, implementing the 2nd Gas Directive (Directive 2003/55/EC). Statute 3428/2005 defined the National Natural Gas Transmission System (NNGS) and appointed DESFA (a 100% subsidiary of the vertically-integrated DEPA) as the owner and operator (TSO) of the NNGS. Pursuant to statute 3428/2005, DESFA had been subject to a system of governance akin to the ITO unbundling model of the 3rd Energy Package. Statute 3428/2005 also set out the rules for third-party, non-discriminatory and transparent access to the NNGS under regulated tariffs, including the principles of congestion management and capacity allocation, the minimum set of supervisory duties assigned to the National Regulatory Authority for Energy (RAE), and the provision of public services obligations (PSO). Further market opening has been advanced through the recent statute 4001/2001, which transposed the provisions of the 3rd Energy Package and aims at establishing the conditions for the integration of the national gas markets into an EU single energy market. Statute 4001/2001 enhances TSO unbundling requirements by implementing the ownership unbundling model, strengthening the RAE’s independence and powers, and promoting regional cooperation.

What is the organizational structure for the generation, transmission, distribution and sale of natural gas in Greece?

The NGGS comprises of a main pipeline of approximately 512 km for the transmission of natural gas through the three gas entries to the Greek territory (Greek/Bulgarian borders in the North, Greek/Turkish borders in the East and LNG terminal in the South). Currently, there are no gas storage facilities and the Revythoussa LNG terminal is used for limited temporary storage to serve TSO’s balancing purposes. The Greek natural
gas market lacks integration with the adjacent markets of Bulgaria and Turkey, mainly because of possible contractual congestion at three exit points (Thessaloniki, Inofyta and Platy). Greece has no generation capacity and its security of supply is exclusively relied on natural gas imported by DEPA from Russia, Turkey and Algeria pursuant to long-term supply contracts. DEPA consequently holds a dominant market share of approximately 80% of the market. Therefore, there are no gas hub services or other structures of organized wholesale trading at place. Nonetheless, the LNG terminal in Revythoussa has contributed to some extent in customers being supplied with natural gas at spot prices. The existing distribution system is developed, maintained and operated by the so-called EPAs which have been established by virtue of statute 2364/1995 (each one designated as the exclusive distribution system operator (DSO) and household customers’ supplier for the geographic regions of, respectively, Attica, Thessaloniki and Thessalia). The EPAs are joint ventures, in which DEPA participates by 51% and private investors by 49%, operating under a 30-year license issued by the Minister of Development. The new EPAs are to be established pursuant to the provisions of statute 2364/1995 and in accordance with the Decision of the European Commission to grant a derogation 11/IX/2008 under article 28 (4) (5) of the 2nd Gas Directive. The new EPAs have been designated to operate within the geographic areas of Central Greece, Central Macedonia and Eastern Macedonia/Thrace. DEPA may hold an international tender for the establishment of these new EPAs.

Pursuant to article 82 of statute 4001/2011, the following customers are eligible to select their supplier:

- all customers outside the geographic territories of the already operating and the future EPAs;
- inside those territories, the electricity producers, the customers consuming at least 100,000 MWh/pa, non-household customers supplied with natural gas for the purposes of using it as a fuel for propellant use, and the already operating EPAs for the quantities of natural gas they require in excess of the quantities specified in their supply agreement with DEPA (following the contract’s expiry, these EPAs shall become fully eligible customers); and
- future EPAs

What authorisations are required to construct and operate transmission networks and who is eligible to provide transmission services?

The ownership and operation of the NGGS is granted to DESFA by law. DESFA operates the NGGS pursuant to a network code introduced in 2010 regulating the operation, maintenance and expansion of the NNGS as well as the provision of third party access (TPA) services. For the establishment of independent natural gas transmission, storage and LNG systems (the so-called “ASFAs”), a prior administrative license must be issued by RAE (articles 74 and 75 of Statute 4001/2011). The ASFAs’ operator is appointed in compliance with the unbundling rules of the 3rd Energy Package by virtue of a license
What are the rules on third party access (TPA) and how are transmission and distribution services regulated?

DESFA must provide NNGS’ users with access in the most economic, transparent and non-discriminatory means, pursuant to the provisions of the NNGS Code introduced in 2010 and recently amended to align the rules of capacity allocation with the Framework Guidelines on Capacity Allocation Mechanism for the European Gas Transmission Network published by ACER (Framework Capacity Allocation Guidelines).

Access to the NNGS is provided on the basis of the NNGS user concluding the following standard TPA contracts with DESFA:

- Natural Gas Transmission Agreements,
- LNG Facility Usage Agreement and
- Agreements for Use of Storage Facility.

DESFA’s tariffs are still set by Ministerial Decision 4955/2006 because the Tariff Regulation, which will be issued by RAE, has not been published yet and is currently under public consultation.

Greece has opted to derogate from the 3rd Gas Directive’s unbundling rules regarding the already existing EPAs, which will continue to be subject to accounting unbundling (as opposed to legal unbundling) pursuant to the provisions of article 49(8) of the 3rd Gas Directive. Consequently, the existing EPAs will continue to offer natural gas within their designated areas under bundled prices on an exclusivity basis. The pricing policy of the existing EPAs consists of two different charges:

(a) a connection fee, and

(b) a gas supply price that is further split into two elements, i.e. the variable gas price (depending on consumption) and a fixed charge that is payable by the customer (irrespective of consumption) on a monthly basis.

The existing EPAs are allowed to set their pricing policy freely, provided that such policy is transparent and non-discriminatory. Moreover, the revenue that each EPA can collect annually cannot exceed a maximum amount (“revenue cap”). Overall the regulatory regime governing the EPAs aims at promoting the natural gas consumption based on exclusivity rights and derogations from the EU unbundling rules.

What are the balancing rules applicable to the Greek natural gas transmission system?

The 2010 NNGS Code established an Entry/Exit System, i.e. a single balancing zone for NNGS (3 entry points and 35 exit points). In 2011 the NNGS Code was amended because of the Framework Capacity Allocation Guidelines and introduced the virtual delivery
and off-take of natural gas to the entry/exit points (with the exception of the entry point of the LNG terminal). DESFA is responsible for the balancing of the national natural gas transmission system (NGTS), i.e. the balance between the quantities delivered to and off-taken from the NGTS. To this end, DESFA may conclude contracts with Suppliers for the supply and delivery of natural gas, following a tender, based on transparent procedures that do not introduce discriminations and are based on market rules. These contracts are concluded after approval from RAE of the annual load balancing program (article 46 of the Network Code). DESFA imposes on NNGS users charges covering its expenses for the gas balancing of the NNGS (article 58 of the Network Code). A similar procedure is also applicable for the balance of shrinkage gas. DESFA keeps separate a gas balancing account to recuperate its balancing-related costs and imbalance charges are cleared monthly for each NNGS user. The balancing mechanism introduced in view of the absence of a wholesale liquid market and limited storage facilities provides that DESFA is still responsible for intra-day balancing, so that balancing requirements will not raise barriers to entry in the gas market. According to said balancing rules:

- Each shipper must balance its inputs and off-takes on a daily basis (balancing period);
- DESFA notifies shippers on their imbalance position at the end of each day;
- A tolerance level is set at ± 10% (subject to biannual review). If a supplier exceeds the tolerance levels, a penalty is imposed by DESFA (article 52 of the NNGS Code). If the supplier fails to balance its outputs and off-takes for five consecutive days, the tolerance level is decreased gradually to reach 0%.

What are the capacity allocation rules applicable to the Greek natural gas transmission system?

The minimum time period for booking transmission capacity in the existing network is one day. For the usage of the LNG terminal, the minimum time period is one month. Each NNGS user may transfer to another user (or a party that has not been registered as a NNGS user yet) the entire or part of the so-called Transmission Capacity the user has booked at an Entry or Exit Point (Transferred Booked Transmission Capacity) with DESFA’s prior consent. A UIOLI mechanism (the so-called Disengagement of Unused Booked Transmission Capacity) has been introduced to address contractual congestion. However, the UIOLI mechanism is, in principle, structured as an administrative procedure that does not provide incentives for the increase of the market liquidity and has been criticized to this end by market participants. Therefore, the NNGS Code was amended to also implement a UIOSI procedure in line with ACER’s Framework Capacity Allocation Guidelines. The amended NNGS code has further introduced another interim measure to promote competition in the Greek natural gas market: the obligatory reservation by DESFA of 10% of the system’s capacity in the virtual entry-points for short-term capacity allocation contracts.
What authorizations are required for natural gas supply and which authorities grant such approvals?

Pursuant to article 81 of statute 4001/2001 the supply of natural gas to eligible customer is undertaken following a license issued by RAE, pursuant to the License Code. Non-eligible customers are supplied by the EPAs or DEPA (in relation to geographic areas where future EPAs have not been established yet).

Is there any tariff or other regulation regarding natural gas sales?

EPA’s supply of natural gas to non-eligible customers is subject to regulated tariffs approved by RAE pursuant to statute 2364/1995 and the provisions of each EPA’s license. To this end, the EPAs submit to RAE their tariffs and the connection cost which will enter into force in the following year and RAE supervises whether said tariffs are transparent and cost-reflective. Currently all existing EPAs apply a cost-plus pricing mechanism, according to which their tariffs are the sum of the cost of supply by DEPA accrued with the cost of distribution and the mark-up of the company.

Although eligible customers are not subject to regulated tariffs, article 24 para 3 of statute 3175/2003 provides that any supply contract with power producers shall not contain terms which are more detrimental to the interests of power producers than the respective terms contained in the supplier’s import contracts, in particular with regard to take-or-pay clauses.

Are there any public services obligations provided by law?

Articles 57 and 81 of statute 4001/2011 regulate the public services obligations (PSOs) of a supplier of last resort. In particular, in case of an emergency, suppliers must provide continuously natural gas to customers (with the exception of large customer), following an order directed by DESFA. There are no other measures introduced yet in relation to PSOs in the Greek natural gas market, because non-household customers are not eligible and, therefore, their supply with natural gas is provided under a monopolistic regime of the EPAs which operate under regulated tariffs.

Are vulnerable customers determined by law?

The following customers are determined as vulnerable by article 52 of statute 4001/2011:

- Household customers who are affected by energy poverty as defined in said statute;
- Customers who themselves or their wives or their cohabitants who are under their custody are dependent on the continuous supply of power, such as customers in need of mechanical support;
- Elderly customers, i.e. customers who are over 70 years old and do not cohabitate with a person who is below 70;
- Customers facing serious health or mental problems and are thus unable to negotiate and handle their contractual relationship with their supplier;
- Customers located in isolated areas and in particular in the non-interconnected islands and are entitled to be supplied with energy under the same tariffs and terms as those enjoyed by customers in mainland Greece.
ENVIRONMENT
Legal nature and validity of Article 24.1

Pursuant to Article 24.1 of the Constitution, the protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development.

Article 24 is included in the section of the Constitution regarding individual and social rights. According to the wording thereof, the protection of the environment constitutes an obligation of the State on the one hand and a right of every person on the other. Moreover, it is explicitly stipulated that for the preservation of the environment the State is obliged to adopt special preventive or repressive measures.

Obligation and right. A far as the obligation of the State is concerned there is no question, since this is stipulated explicitly and is sufficiently analyzed in both theory and case law. The question that came up before the 2001 revision was to what extent this State obligation may give birth, reflectively, to a respective constitutional right: the right to environment.

Constitutional right. The legal obligation is understood as a negative aspect of the right, since its main reason of existence consists in guaranteeing the beneficiary’s rights. In any case, there is now no question of interpretation, since with the 2001 revision, environmental protection is hereinafter defined as everybody’s right. The right to environment is a constitutional right, since its existence and exercise are guaranteed by a constitutional provision, which binds all three constitutionally entrenched powers. It is a right governed by public law, i.e. the exercise of this right creates a legal tie in the field of State action, which is characterized by the exercise of public authority and is governed by public law rules.

The protection of the environment after the revision of the Constitution in 2001

With the revision of the Constitution in 2001, the protection of the environment was explicitly characterized not simply as an obligation of the State, but also as everyone’s right. The right to environment is understood as the right to a healthy and ecologically balanced environment. In case law, this is sometimes characterized as a social right regarding the use of the natural environment (Council of State 3146/86 Plenary).

It is of course pointed out that the revising legislator preferred to adopt a wording that speaks of everyone’s right to environmental protection and not to the environment itself. This wording is not deprived of legal significance. It underlines the procedural nature of the right, as everyone’s right to participate in environmental protection decision-making and to be able to defend this before the courts. It also lays unilateral emphasis on the anthropocentric, rather than ecological, dimension of environmental protection.

What is of interest, that is, to the legislator of the revision is for everybody to be able to seek protection of environmental goods linked with the protection of his health and
possessions, as well as protection of the environment which makes up his vital space. In the above decision, according to the majority, after explicitly underlining the wish to enhance environmental protection, together with the fact that this is an acknowledged individual right, the particular purpose of the revision is determined: the new explicit right aims to maintain and improve quality of life. The choice not made, i.e. the right to environment, has different ideological and legal dynamics. It underlines the value of the environment as a good per se and lays emphasis not only on protecting human health and prosperity, but on nature itself as well and on preserving the natural ecosystems. The right to environmental protection is included in the right to environment, but it does not stand the other way round.

THE DIRECT AND IMPERATIVE FORCE OF THE CONSTITUTIONAL PROVISION

Binding force

The regulations contained in article 24.1 are not simple guiding provisions but rules of direct and imperative force, which encompass a binding imperative for the common legislator, the Administration, the courts and those governed to comply with its content. By means of these provisions, the natural (and cultural) environment (Council of State 637/98) is directly protected, while imperatives of autonomous and direct implementation are expressed (Council of State 2818/97).

In his capacity as general rapporteur of the Parliament’s minority, D. Tsatsos had already expressed back then the “wish for these provisions to be less programming, and to rather create expectations (General report of the minority, “The Constitution” (ΤοΣ) Journal, issue 1, 1975, pp. 230-231).

a) The Administration’s obligation of abstention

However, even in absence of legislative provisions on environmental protection, a direct obligation of the Administration results from the regulations of article 24.1, according to which, in shaping its opinion when dealing with issues related to or having an impact on the environment, the Administration must take into account the need to protect the environment and adopt appropriate measures to this aim or refrain from issuing acts that are harmful to the environment, always within the framework of the aforementioned criteria that guide the pertinent legislative action (Council of State 810-811/77, 4591-92/77, 2034, 3791/78, 797/81, 1362/81, 3754/81 Plenary, 2196/82, 1069/84, 2281/92 Plenary, 412/93 Plenary, 2757/94 Plenary, 951/96, 2818/97, 1675/99).

b) The obligation to adopt measures

More recent case law shows a preference in the wording that, with the provisions of article 24.1, the natural environment has been characterized as an object of strong State interest and an obligation is imposed upon the State to adopt special preventive and suppressive measures in order to protect it, after pondering other rights protected by the Constitution, and the general interest. This protection must be full and effective. (Council of State 412/93 Plenary, 2755/94 Plenary).

It is accepted, that is, that the legislator of the Constitution did not confine himself to providing for the ability to establish measures for environmental protection, but imposed on State bodies having the relevant competence, to take positive actions in order to effectively preserve the right protected and in particular to adopt the necessary legislative and administrative preventive and suppressive measures, intervening to the
extent needed in the financial or other individual or collective activities. (Council of State 2731/97, 613/02 Plenary).

While adopting the aforementioned measures, the bodies of the legislative and executive power must also weigh other factors related to the general national and public interest, yet the pursuit of these objectives and the weighing of the respective legal rights that are protected must walk hand in hand, in a way that will guarantee sustainable development (Council of State 3478/00 Plenary, 1569/05 Plenary, 2,705/06 Plenary).

c) The omission of a legal obligation to act

The demand of the legislator of the Constitution pursuant to the provisions of article 24.1 for preventive and suppressive measures in terms of environmental protection, led the case law to a bold and dogmatically dubious enlargement of the sense of omission of a legal obligation to act.

Starting from the assessment that, according to the constitutional provisions of 24.1, full and effective protection of the environment is dictated, the case law was led to the ascertainment that on the one hand the constitutional obligation of the Administration is analyzed as an obligation to adopt the necessary preventive and suppressive measures, which must be, according to the case, either regulatory or general – individual or individual, while the constitutional obligation of the Courts consists in providing full and effective judicial protection (Council of State 3974/2010).

THE RIGHT TO ENVIRONMENT

a) Content of the right

The right to environment is the right to a healthy and ecologically balanced environment. This right accompanies the respective obligation of the State and is provided for explicitly in article 24.1, following a relevant addition by means of the 2001 revision of the Constitution. In case law, it is sometimes characterized as “a social right to use the natural environment” (Council of State 3146/86 Plenary, 4617/86). The right to environment on the one hand protects human health and quality of life, while on the other hand it also protects the environmental elements per se. It is accepted that the natural environment has been elevated to an originally protected right, in order to guarantee the preservation and conservation of the country’s ecological balance and to safeguard its natural resources, also for the benefit of future generations. (Council of State 2537/96 Plenary, 3396/10).

b) Characteristics and force of the right

The elements which make up the concept of the right to environment on the one hand concern an assurance of the natural bases of life, without which life would be threatened, and quality of life, i.e. the development of human abilities in the interest of the individual and society, as a legal right of people and an autonomous value. The right to environment can be determined as a person’s right to create, preserve and conserve, and restitute those conditions, which can guarantee life, health, quality of life - natural, moral, spiritual and social -, and the environment itself as a directly protected legal right.

The content of the right to environment is complex: this right is first of all a personal right in the sense that it protects life and health, which are par excellence personal
rights. In the sense that the environment belongs to everybody and is a common good, it is also a collective right. The right to environment comes under the third generation of rights and expresses the collective interest in environmental protection, which is identified neither with the personal rights of individuals, these being besides competitive with one another par excellence, nor with the concept of general interest, which aims to an arbitration of these personal interests and is the foundation of the State regulatory action. Finally, it is also a right of solidarity, since it protects a good that takes future generations into account as well, by creating such conditions of life in the present that will allow for the survival and evolution of mankind. Finally, we must point out that the right to environment, determined as a man's right to a healthy and ecologically balanced environment has a variable content, which requires of course different perceptions on the economy, different targets in terms of physical planning and perhaps the renunciation of activities and technologies that consume too much energy and space.

c) The right to environment as an individual right

The function of individual rights has a negative character, a defensive one, which sets limits to the action of State authority and aims to create a “State intervention-free” sphere. Their negative content consists in the individuals’ claim against the State regarding non-intervention in this sphere of freedom. Should the State violate its obligation of abstention and non-intervention, the individual affected may seek restitution through legal remedies.

In this respect, the right to environment means:

a) An obligation of the State not to infringe upon, whether directly or indirectly, the persons’ environment through activities or decisions taken in the context of public authority. In this respect, this means that the obligation of the State is a negative one, according to which it must not intervene in regulations that run contrary to the provisions of article 24.1 of the 1975 Constitution and in the event of such regulations already existing, to refuse to implement them, considering them anti-constitutional.

The obligation to refrain from any act that is harmful to the environment aims for the latter to constitute a field which will foster the free development of one's personality in a healthy, high-quality environment.

b) An obligation regarding the establishment of legislative and administrative regulations on environmental protection. In view of the lack of such regulations, which are consistent with the protection provided for under article 24.1, the Administration has the obligation to implement the provisions of the Constitution directly. The legal force of the right to environment, as an individual right, is imperative, i.e. it establishes a rule of law which is put into effect directly and such rule produces legal results on its own, i.e. without requiring the issuance of a relevant law. Therefore, every person affected by an administrative act in terms of his legal right, i.e. his environment, may seek judicial protection, on the direct basis of the constitutional provision of article 24.1 and request the annulment of the act, which has a negative impact and is harmful to the environment and/or seek damages for the harm sustained.

This means that the defensive protection provided by the right to environment, as an individual right, is full and indisputable, compatible with all elements required by a public law right.
d) The right to environment as a social right

Social rights fall within the category of positive rights. They have a positive content, i.e. their bodies demand certain provisions from the State. These are legalized demands expressed by their bodies to guarantee the desired interventions on behalf of the State in order to actually activate their freedom. Their content is a combination of the civil and social perceptions of those exercising authority and their value consists in the fact that they re-define freedom, granting it its substantial content, while at the same time they enlarge the abilities of the power and humanize the right to property.

Social rights include all rights linked with the social substance of the individual, collective rights, exercised by one person as a member of a social group or a community and claimed as a social person, as a socially determined existence integrated in a social group. The characteristic elements of social rights advocate strongly in favour of characterizing the right to environment as a social right.

In a decision of the Suspension Commission of Council of State it became accepted that the protection of forests and wooded areas, which is established by the Constitution, “is hereinafter reduced to a social right”.

e) The right to environment as a civil right

Civil rights result from the active status of a person and are rights regarding the participation of individuals in the exercise of State authority. The participation rights par excellence, both in terms of individuals and groups, are collective rights. These rights guarantee the ability of an autonomous collective action, aiming to defend interests, as well as the ability to receive provisions, thereby implementing the participation of individuals, as members of society, in the goods of social production and in decision-making processes regarding such goods. In the Constitution, articles 25.1 and 5.1 act as legalizing grounds for such participation.

The right to environment as a right of individuals to participate in environmental protection is perceived in its broadest sense: participation in decision-making processes concerning rational management, preservation, improvement and restoration of the environment; it concerns both advisory and decision-making responsibilities in the field of environmental policy-making.

f) The right to information

The first thing about the right to participate in environmental protection is the right to information that individuals have vis-à-vis the Administration with respect to all issues concerning their environment. The obligation of the Administration to provide information includes making public all regulations and measures that concern the environment directly or indirectly, as well as providing the ability to have free access to the relevant public documents, texts and drafts on environmental policy. Finally, the obligation to provide information should also include a justification of decisions about the environment, which must only be based upon data published.

g) The participation in decision-making

The second thing about the notion of participation is also its main element and concerns participation in a strict sense, i.e. the participation of individuals or groups of individuals or associations with the task of protecting the environment, in the administrative decision-making processes, which end up either in the issuance of administrative acts.
regulating environmental policy issues or in the submission of bills on the environment to be voted in Parliament. Such participation can be accomplished: a) at the stage of preparatory works and preparatory drafting of the regulations in the form of cooperation between the competent State bodies and individuals or groups, to which these regulations are of interest, or which are representative of the specific issue to be tackled. An example of this form of participation is the participation of citizens interested in shaping the general city-planning (Law 1337/83, article 3), b) through the participation of individuals or groups of individuals in shaping the regulations themselves. A first step in this area is to recognize the ability to participate solely with advisory responsibilities.

**h) The ability to resort to remedies**

Finally, the participation of individuals is only completed with the existence of judicial means consolidating their right to information and participation, and to environmental protection in general. The ability precisely to use remedies for environmental protection is a means of participating therein.

The right to information on environmental issues is regulated in particular by amended EU directive 90/313, which has been transposed in the Greek law by means of Joint Ministerial Decision 77921/1440/1995 (Government Gazette 70 B). The right to participate in decision-making and to free access to environmental information as well as to justice is also stipulated in the Aarhus Convention, which was signed on 25.6.1998.
AIR POLLUTION

How is “air pollution” defined under Greek Environmental law?

The definition of air pollution is given by article 1 (a) of the Geneva Convention on Long-Range Transboundary Pollution. Accordingly, ‘air pollution is defined as ‘the introduction by man, directly or indirectly, of substances or energy into the air, resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems and material property, and impair or interfere with amenities and other legitimate uses of the environment.’ Chief sources of air pollution are transportation, power generation, process industry and other production activities.

What are the general measures by which air pollution control is attempted?

The main provisions regulating air pollution control are to be found in Environmental Protection Act 1986 (EPA), under art. 7 and 8. In general, the measures adopted for the abatement of air pollution include:

(i) prior authorization of pollution-causing activities,
(ii) definition of emission standards,
(iii) zoning and regulation of fixed and movable pollution sources. Depending on the kind of activity, special regulations exist.

Law 1327/1983 regulates preconditions and competent authorities for the issuing of contingency plans tackling atmospheric pollution according to pollution sources and provides for designation of areas as degraded environment areas in cases of major emergencies, unusual deterioration of environmental quality or necessity for the protection of human health.

What are the criteria by which specific measures for the protection of the atmosphere are laid down?

Restrictions and measures by project category and areas affected are imposed on existing and new projects and activities as defined in Article 3 of the Environmental Protection Act 1986 and on any other activities which may cause air quality degradation. These restrictions and measures vary according to the kind and size of the project or activity, their importance to the national economy, and whether they are regulating new projects or activities.

What are the relevant competent Greek Authorities for the implementation of environmental protection measures?

The authorities primarily responsible for the enforcement of these measures and the control of air pollution are

(i) the Ministry of Environment, Energy and Climate Change, mainly through the network of air quality monitoring stations,
(ii) the Ministry of Infrastructure, Transportation and Networks through licensing and pollution control over movable pollution sources,
(iii) the Ministry of Development and Competitiveness through licensing and pollution controls of industrial units and
(iv) the Ministry of Citizens Protection through enforcement of legislation imposing sanctions to polluters.

How is air quality monitor effected?

The Ministry of Environment, Energy and Climate change establishes a national network of stations to monitor atmospheric quality. The existing atmospheric quality monitoring stations form part of the national network and new monitoring stations operating under public authorities also participate in the national network and harmonize their standards accordingly.

Guide and limit values for atmospheric quality, sampling and analysis methods, frequency of sampling, time schedules for the above and any other detail relevant to air quality are decided by Acts of the Cabinet, following submissions by the Minister of Health and the Minister of Environment.

Stricter limit values can be also imposed by Acts of the Cabinet in the case of more sensitive ecosystems or because of the presence of cultural heritage elements.

In view of the implementation of Directive 2008/50/EC in Greek legal order, air quality plans are established where, in given zones or agglomerations, the levels of pollutants in ambient air exceed any limit value or target value set there under. Within this framework, short term action plans may be adopted in order to suspend activities which contribute to the risk of the respective limit values or target values in relation to motor-vehicle traffic, construction works, ships at berth, and the use of industrial plants or products and domestic heating inter alia.

What are the possible restrictions which may be imposed on (a) industrial and relevant activities and (b) central heating systems?

(a) For projects in industry, in the manufacturing business, in quarrying and mining, agriculture, animal breeding, commerce, tourism, energy and for any type of combustion or open fire, storage and transportation of loose materials and for projects generating smells in general, the following restrictions and measures may be applied:
1 safety distances; 2 application of anti-pollution technology; 3 use of specific raw and assisting materials and fuels; 4 limit values for gaseous atmospheric effluent emissions; 5 specific working hours; 6 installation of instruments to monitor the quality and quantity of gaseous atmospheric effluent emissions, to monitor fuels as well as raw and assisting materials; 7 installation of instruments to monitor combustion; 8 definition of methods, conditions and frequency of sampling and analysis of parameters referring to the quality of the used fuels, raw and assisting materials and gaseous atmospheric effluent emissions; 9 methods to eliminate smells; 10 definition of chimney heights and 11 product quality standards.

(b) In case of systems of central heating, the following are provided:
1 limit values for gaseous atmospheric effluent emissions; 2 maintenance and tuning of central heating installations; 3 use of specific fuels; 4 thermal insulation of hot-water boilers and pipes; 5 application of automated systems to regulate the function of boilers; 6 definition of chimney heights and chimney manufacturing details; 7 use of smoke-collectors; 8 qualifications and obligations of professionals working in maintenance.
The abovementioned measures and restrictions are nevertheless only indicative and further measures and restrictions could be imposed. What is more, a number of Cabinet Acts and ministerial decisions have been issued, many in compliance with European Union Directives, which regulate emissions from fixed sources, e.g. set the measures and conditions for the reduction of atmospheric pollution by large combustion plants, the control of major accident hazards of certain industrial activities, the prevention of air pollution from municipal waste incineration plants, the control of pollution by lignite-generated electric power stations managed by the National Electric Company in the Prefectures of Kozani and Florina, the operation of certain metal process industries’ procedures in Athens, the use of diesel oil in part of the Prefecture of Attiki, terms for the operation and the fuels used by bakeries’ furnaces, the allowed fuel types for all industrial activities, hospital incineration installations and open fires, the operation of furnaces for the heating of buildings and water.

What are the main measures and restrictions provided for (a) motor vehicles and machinery and (b) installations and means of transport, storage, distribution and trade of fuels and explosives?

(a) In the case of motor vehicles and machinery, the measures and restrictions may include:
1. limit values for gaseous atmospheric effluent emissions; 2. manufacturing standards for motor vehicles and machinery either produced in the country or imported so as to make sure they are fitted with devices reducing polluting emissions; 3. relevant obligations on imports and marketing of spare parts and equipment; 4. relevant obligations on the maintenance and repair industries (specification of equipment and qualifications of personnel); 5. use of gas and ‘clean’ fuels and 6. traffic restrictions.

Other important law relevant to air quality control is the Road Traffic Code (Law 2696/1999) providing for the reduction of motor vehicle emissions.

(b) For installations and means of transport, storage, distribution and trade of fuels and explosives, application of systems to reduce gaseous atmospheric effluent emissions and safety measures and distances are required.

Various pieces of legislation, including European Union Directives, provide for maximum emission levels from movable pollution sources, e.g. fuel quality standards – lead content of petrol, sulphur content of petrol, maximum levels of carbon monoxide (CO) and hydrocarbons (HC), emissions from motor vehicles fitted with petrol engines, carbon dioxide (CO2) emissions and fuel consumption of motor vehicles, measures to reduce gaseous atmospheric effluent emissions from petrol or diesel engines to be fitted on or from motor vehicles, anti-pollution standards for passenger cars, anti-pollution standards for cars weighing up to 3.5 tonnes, fuel consumption of motor vehicles, frequency of periodic roadworthiness safety tests for motor vehicles.

What are the criteria according to which limit values are set?

Limit values for gaseous atmospheric effluents are set according to the best available technology not involving excessive costs and they may refer to any pollutant regardless of whether specific air quality standards have been set for this pollutant or not. Furthermore, European Union legislation in human activities affecting air quality introduces specific national emission ceilings for certain pollutants (emissions of sulphur dioxide (SO2) nitrogen oxides (NOx), volatile organic compounds (VOC) and ammonia (NH3)).
Limit values for all kinds of pollutants emitted from industrial installations and activities in general are also provided for by Presidential Decree 1180/1981.

INDUSTRIAL NOISE

Where does the term “industrial noise” refer to under Greek law?

Industrial noise may be defined as the noise emissions produced by industrial and relevant activities both from fixed installations as well as movable sources. On the contrary the term does not comprise noise from domestic activities or places of entertainment and recreation in general, such as theatres, cinemas, sports grounds.

What is the legal framework provided under Greek law?

The relevant provisions regulating noise emissions under Greek law are to be found in numerous pieces of legislation, depending on the source of noise emissions and activity. The main legal framework is provided under art. 14 of the Environmental Protection Act 1985, Presidential Decree 1180/1981 and various European Union instruments, mainly on the subject matter of noise emissions from motor vehicles and equipment used outdoors.

What are the measures and restrictions concerning industrial noise emissions from fixed sources under Greek law?

Activities and projects generating noise are in particular industrial, manufacturing, quarrying or mining activities, construction plants, laboratories, any type of engineering installations. All new and existing activities and projects are classified into categories according to their effects on the environment. These activities and projects are subject to restrictions and protection measures issued by joint ministerial decisions concerning:

1. Limit values of noise emissions into the environment;
2. Methods of measuring noise;
3. Ways of reducing noise and vibrations and methods of measuring their effectiveness;
4. Specific working hours;
5. Installation of instruments monitoring noise levels and
6. Minimum distances from dwellings and areas of public gatherings.

For industrial installations requiring prior Environmental Impact Studies, the relevant limit values are found in Presidential Decree 1180/1981.

What are the measures and restrictions concerning industrial noise emissions from movable sources under Greek law?

Production, import, trade and use of any motor vehicle, machinery and equipment which produce noise nuisances or are sound-generating, are restricted according to joint ministerial decisions taken by the Minister of Environment, Energy and Climate Change. These decisions especially regulate (i) the limit values for sound and vibration emission levels, (ii) the methods for measuring them, (iii) the authorization procedure as well as (iv) the specific conditions or even the prohibition in production, import, trade and use. In the case of major or special projects, motor vehicles, machinery and equipment can be exempted from the previous restrictions by similar decisions.

For motor vehicles, European Union instruments with a view to unifying the single market in the trade of automobiles lay down limits for the noise level of the mechanical parts and exhaust systems of vehicles. Similar legislation is provided for motorcycle and aircraft noise.

European Union legislation is particularly active in the case of outdoors machinery. Pursuant to Directive 2000/14/EC, more than 50 types of equipment used outdoors,
such as lawnmowers, compressors, excavator – loaders, saws, mixers, etc are regulated, imposing harmonised limit values for noise emissions and requiring labeling and declaration of conformity on the part of the manufacturer prior to circulation in internal market. However for non-powered attachments that are separately placed on the market or put into service, all equipment intended for the transport of goods or persons by public road or rail or by air or on waterways and equipment designed and constructed for use by the police or the military, the noise emission standards are assessed by national Greek law.

**What are the criteria for determining limit values for noise emission levels?**

Limit values for noise emission levels in urban areas and the permissible sound levels in noise-abatement zones are determined by the criterion of nuisance minimization and the resulting protection of human health. These limit values and the methods of measuring noise emissions are set by presidential decree issued after proposals put forward by the Minister of Health and Social Solidarity and the Minister of Environment, Energy and Climate Change.

**What does Greek law provide for noise-abatement zones?**

Noise-abatement zones are designated by joint ministerial decisions (i) around existing or newly-founded industrial installations, (ii) around or alongside areas used for transportation (especially roads, ports, airports), (iii) around archaeological sites and sites of historic interest, (iv) around dwellings, and (v) around areas used for rest, health care, education and cultural activities.

The same ministerial decisions provide for the geographical limits of the zones, the necessary noise-abatement measures, the parties liable, criteria for the planning of new installations or activities, terms and conditions for further development of other activities within the noise-abatement zones and any other details.

**CLIMATE CHANGE**

**Is Greece party to the Kyoto Protocol?**

With Law 3017/2002 Greece has ratified and thus is fully bound by the Kyoto Protocol. Furthermore, it is one of the 39 parties that are bound by an absolute quantitative limit of greenhouse gas emissions.

**How is Greece’s Climate Change strategy effected?**

Greece adopts and pursues the collective goals in reducing greenhouse gas emissions set by the European Union. Within this framework, Greece is bound to achieve at least a reduction by 20% by 2020 compared to 1990 levels. Furthermore, a reduction of 80-95% is set as goal until 2050, as laid down in Intergrated Pollution Prevention and Control (IPPC) Directive.

**What does the European greenhouse gas emission allowance trading scheme provide?**

Greece implemented Directive 2003/87/EC by which any installation carrying out activities in the energy sector, iron and steel production and processing, the mineral industry and the wood pulp, paper and board industry and also the airline activities, emitting greenhouse gases associated with that activity must be in possession of an appropriate permit issued by the competent authorities in order to operate.
What are the competent Greek Authorities?

The Ministry of Environment, Energy and Climate Change is the competent authority to issue the relevant permits and more specifically the Office for Trading Gas Emissions, after application of the interested party. The National Centre of Environment and Sustainable Development establishes a registry where the issue, retrieval, possession and cancelation of the gas emission permits are registered.

When is the permit issued?

The authorities will issue a permit provided they are satisfied that the operator of the installation is capable of monitoring and reporting the emissions. A permit may cover one or more installations on the same site operated by the same operator and are reexamined at least every five years subject to the necessary modifications. The application of the operator must describe:
(i) the installation, its activities and the technology used
(ii) the materials used which could emit the greenhouse gases
(iii) the sources of gas emissions
(iv) the measures planned to monitor and report emissions.
What are the basic law rules on the protection of the natural environment?

The core rules of the environmental protection are grouped in the Article 24 of the Constitution, which entrenches the environmental protection in its three aspects: the natural, the residential and the cultural one. According to this: «The protection of the natural and cultural environment constitutes a duty of the State and a right to every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development». In this article, we also come across specific references to the protection of forests, residential environment and monuments. The provisions of the article establish the fundamental principles of the environmental protection; they mainly refer to the principle of sustainable development (in conjunction with the article 106 of the Constitution), the prevention principle, the precautionary principle and the principle that “the polluter pays”.

There are two basic pieces of legislation specifying these constitutional rules: the law 1650/1986 on the protection of the natural environment and the law 998/1979 on the protection of forests and forest expanses. These laws, which constitute the backbone of the legislation on the protection of the natural environment, have been consecutively modified until the present day. Furthermore, it is worth noting that, during 2011 a series of laws have been enacted regarding the environmental protection which aim to illustrate the legal framework and, therefore, facilitate possible investments. In concrete terms, we refer to the law 3937/2011 on the protection of biodiversity and NATURA 2000 network areas, the law 3982/2011 on the establishment and development of Business Parks, the law 3983/2011 on the protection and management of the marine environment, the law 3986/2011 on the management of public property and the law 4014/2011 on the environmental licensing of projects and activities. These followed

1. Apostolos Papaconstantinou has taught Public Law for a series of years in Greek Universities, being at the same time in significant positions in the Public and Private sector.


the law 3894/2010 on the acceleration and transparency regarding the realization of «Strategic Investments». It is, finally, stated that the approval of the general and some specific regional planning frameworks has significantly increased legal certainty in this specific area: We refer to the «General Context of Regional Planning and Sustainable Development» (Gov. 128/A/03.07.08), the «Specific Context of Regional Planning and Sustainable Development for Renewable Energy Resources» (Gov. 246/B/03.12.08), the «Specific Context of Regional Planning and Sustainable Development for the Industry» (Gov. 151/AAP/13.04.09) as well as the «Specific Context of Regional Planning and Sustainable Development for Tourism» (Gov. 1138/B/2009).

**Do the rules for the protection of the natural environment entail serious restrictions for the development of investment projects?**

The legal framework for the protection of the natural environment is, in the Greek legal order and in common assumption, stricter compared to that of the majority of the European Countries. This is attributable in particular to the fact that Greece’s territory includes – owing to the special climate, extensive coastline, the large number of islands and mountainous landscape of the hinterland- many fragile ecosystems requiring increased protection. It is interesting that almost 30% of the territory is included in the European ecological network NATURA 2000. It is, therefore, expected that the rules for the protection of the environment, the severity of which is compounded by the jurisprudence of the Supreme Administrative Court (Council of State) can affect the potential for development of investment projects. On the other hand, these rules constitute a comparative advantage, since compliance with them facilitates the preservation of the unique natural environment and the particular landscape of the country. Hence, the development of significant investments, particularly in the areas of tourism, outing, holiday housing and organic farming is rendered possible.

**Which is the process of licensing environmental projects and activities?**

The settings of the law 1650/1986 (articles 3 and 4) on the procedure for environmental licensing were recently replaced by the law 4014/2011. The recent provisions were set to enable the simplification and rationalization of related procedures since the previous legislative framework has, in many cases, turned out to be inflexible, complex and eventually ineffective. The ultimate but yet visible target of the recent provisions is to facilitate the completion of investment projects, in such a way as to ensure the sustainable development of the country. According to the provisions of the law 4014/2011, projects and activities of both public and private sector, the construction or operation of which may have an impact on the environment, are classified in two categories (I and II) depending on the effects on the environment. The first category (I) includes projects and activities likely to cause significant effects on the environment which additionally require an Environmental Impact Study (EIS) in order to impose specific conditions and restrictions for the protection of the environment on the specific project or activity. The second category (II) includes projects and activities entailing local and non-significant effects on the environment which are subject to general standards, conditions and restrictions placed on the protection of the environment.
In order for new projects or activities falling in category I to be carried out or for the existing ones to be migrated, it is required that an environmental licensing procedure is being established through holding an EIS and issuing a Decision Approving the Environmental Conditions (DAEC). The operator of the project or activity in category I may request the opinion of the competent environmental authority with the submission of a dossier of Preliminary Determination of Environmental Requirements (PDER), before submitting the EIS. For each new project or activity, an opinion of the Ministry of Culture and Tourism is required on whether the region, where the project or the activity is to be located, is of archaeological interest, with the exception of projects or activities within regulated receptors of productive activities. An opinion of the forest service is only required for projects located in forests, forest and reforestable expanses, groves and parks, and, generally, in areas outside the approved urban projects, outside the limits of settlements and outside organized receptors of productive activities. The DAEC imposes conditions, terms, limitations and variations for carrying out the project or activity, in particular as regards the location, size, type, the applied technology and general technical characteristics. Furthermore, any necessary remedial or preventive as well as compensatory measures are equally imposed via the DAEC.

On the other hand, projects or activities in category II do not follow the procedure of elaborating an EIS; however, they are subject to Standard Environmental Commitments (SEC). The afore-mentioned projects or activities, depending on their type, are automatically subject to SEC with the responsibility of the competent authority, which has granted the operating permit, and, after the relevant statement of the researcher or the operator of the project or the activity.

What is provided specifically for the development of investment activities in NATURA 2000 network areas?

It is clear that in these areas, the conditions for environmental licensing are more stringent. Nevertheless, neither the Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora or the national legislative framework prohibit such development projects and activities, provided, of course, not to cause significant deterioration of the natural environment. The integrated touristic developments, for example, are, in principle, permissible provided that it is comprehensively deduced by the EIS that their construction and operation will not lead to a serious risk of damage to the natural environment of the region. The environmental conditions of these activities are, besides, expected to ensure sustainable development.

The law 3937/2011 (article 9), in the areas of the NATURA 2000 Network, prohibits «especially disturbing and dangerous industrial installations covered by Directive 96/82/EC» as well as «nuisance high industrial installations». The minimum integrity and fragmentation limit of the land in these areas is set to 10,000 square meters. However, land areas of at least 4,000 square meters are exceptionally considered sound and notwithstanding buildable in case they were already beneficiaries of these characteristics in accordance with the existing urban planning regulations when the law 3937/2011 was published (31.03.2011).
Is there a legal provision for other areas of increased environmental protection?

The law 3937/2011 (articles 5 και 6) provides for the adoption of presidential decrees concerning the designation of special areas with fragile ecosystems as well as the delimitation and definition of land use within their boundaries. Namely: a) «Strict Nature Reserves» including extremely sensitive ecosystems and also rare and endangered species of flora and fauna. In these areas, any activity is prohibited, b) «Nature Reserves» including areas of high ecological or biological value. In these areas, any activity which may alter or affect their natural status is also prohibited, c) «Nature Parks» including areas with particular environmental value due to the quality and the diversity of natural and cultural characteristics. In these parks, it is allowed exclusively to exercise cautious agenda and activities.

What is provided for the environmental licensing of «Strategic Investments»?

It is, initially, stated that, according to the law 3894/2011 (article 1), «Strategic Investments» are defined as «the productive investments which have quantitative and qualitative results of significant tension in the overall national economy and promote the country’s exit from the financial crisis». The provisions of the afore-mentioned law seek to simplify and expedite procedures for environmental licensing of these investments. In this case, the approval of the environmental conditions shall take the form of common ministerial decisions, whilst the opinions of the Services of Ministries which, generally, approve the environmental conditions are not required. Moreover, deviations from the applicable urban planning regulations as well as the conditions and building restrictions are permitted for these investments. In order for strategic investments to be carried out, the main contractor is granted the right to use foreshore, beaches, contiguous or adjoining sea space or bottom soil. Furthermore, the main contractor of strategic investments may be granted lease hold use or tenancy of any property created by the shift of the limit of the foreshore towards the sea due to construction or extension of projects or alluvial terrace. It is also provided for a special procedure concerning the expropriation of land as well as the concession of public land for the construction, extension and modernization of Investment Strategies. Conclusively, it is noted that regional planning or environmental permits for the execution of projects shall be issued within two (2) months as the expiry of that specific deadline leads to the presumption that the requested permit has been granted in accordance with the submitted application.

What is regulated on the management of public property?

The law 3986/2011 includes «urgent measures for the implementation of the Medium-Term Budgetary Framework Strategy 2012-2015». In the context of these measures, we come across regulations concerning location and environmental licensing of investment projects in public property issues. In particular, there is a provision for maximum permissible percentage coverage of the land, while at the same time the law introduces the process of issuance of a joint ministerial decision as the legal means to be granted location rights for investment projects as well as a specific beneficiary legal status enabling the concession use of foreshore and beaches and the issuance of building permits.
What is the case-law of the Council of State in the field of the environmental protection and its impact on the promotion of investments?

Perhaps, it would not be an exaggeration to state that the case-law developed by the Supreme Administrative Court of the country has played, in this area, a decisive role. A key feature in its structure is the acknowledgement of priority to the protection of the environment. The control of legality, exercised by the Court, on the approval acts of environmental conditions and, generally, of environmental licensing is strict; in many cases greater in-depth. The rigid application of the theory of the «environmental acquis», as well as of the «residential acquis», in a way that leaves no room for a substantial rehabilitation of a more equitable balance between environmental protection, on the one hand, and the protection of property rights and promotion of financial development, on the other hand, as the principle of sustainable development imposes, is indicative of the afore-mentioned stringency.

According to settled case-law of the Court, the natural environment has developed into separately protected goods in order for the ecological balance and preservation of natural resources to be ensured in favor of subsequent generations. When taking measures of environmental protection, the legislative and executive power bodies, with respect of the principle of sustainable development, ought to take into consideration more factors regarding the wider national and public interest, such as those relating to the purposes of financial development, management of national wealth, aid for regional development and ensuring labour to citizens, i.e. purposes with constitutional welfare background. However, the pursuit of these purposes and the weighting of the relevant legal goods must be combined with the obligation of the State to ensure the protection of the environment in such a way as to ensure the constituent and, at the same time, community-legislator intended sustainable development. In addition, when weighting factors, in compliance with the prevention and precautionary principle in the field of environmental protection resulting from the above provisions, the competent state instruments must take, primarily, into account the existence of any special risk for the natural environment emerging from the construction and operation of a particular project or the development of a specific activity and not, therefore, grant approval in case of a substantiated observation of that particular risk – including the imminent one from any improper functioning of the project – surpassing, in an obvious way, any expected benefits from its operation. However, in any case, and in order for the evaluation of the situation to be consistent with the need to protect each conflicting legitimate goods, it is essential to expose and sufficiently account, on the one hand, the way and method of construction and operation of the concrete establishment and, on the other hand, the particular nature of public interest, which will be hopefully served by the project or activity, since the above imposed evaluation reflects the type and

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extent of the imminent harm as well as the nature of the need satisfied through the implementation of the project. The generally strict nature of the case law of the Court of State is likely to decline in the years to come, particularly due to the severe financial crisis and, subsequently, the country’s need to follow a developmental trajectory.

Legal framework for water protection and management in Greece

In fulfillment of Directive 2000/60/EC of the European Parliament and of the EU Council, Greece adopted Law 3199/2003 and Presidential Decree 51/2007 concerning the protection and management of surface waters and ground water. The latter provide for the separation of Greece into river basin districts and the drafting and issuing of river basin management plans which shall be revised and updated every six years. Management plans shall include programmes of measures and monitoring of the water status. Greece has been separated into 14 river basin districts. According to L. 3199/2003, water uses include: water supply, irrigation, industry, energy and leisure.

In addition, L. 3199/2003 provides for the issue of permits, which cover the use of water resources and the execution of works concerning the exploitation of water resources (hereunder “water works”). Permits are required in all cases concerning water supply, use of water, water works, and works or activities for the protection of water from pollution caused by discharge of liquid waste into the environment. Permits may be granted to any legal or natural person for the satisfaction of their real needs. Water works may also be undertaken for the satisfaction of third parties’ needs, as long as general interest is served. Permits are granted based on the respective river basin management plans, and the programmes of measures, which give substance to the provisions of such management plans. In order for the permits to be granted, the availability of the quantity of water to be used and the purpose of the use of water should be established.

Relevant bodies for water protection and management in Greece.

The Central Water Agency established within the Environment, Energy and Climate Change Ministry is responsible for establishing national water policy and drafting national programmes for the protection and management of water resources. These programmes are separated between long-term plans (with a duration of over six years) and medium-term plans (with a duration of two to six years).

The National Water Committee is responsible for approving national programmes for water resource protection and management and for cooperation with other EU members or third countries in case of river basin districts extending into their territory.

River basin management plans are issued by decision of the General Secretary of the relevant Decentralised Administration (Apokentromeni Dioikisi).

Permits for the use of water resources and the execution of water works are also issued by decision of the General Secretary of the relevant Decentralised Administration.

Additional permits may be required, depending on the work or activity to be undertaken (e.g. in cases of hydroelectric works, transfer of water, drillings etc.)
Have river basin management plans provided for in L. 3199/2003 been issued? How does the absence of river basin management plans affect the issuing of permits?

According to L. 3199/2003 the first river basin management plan should have been drafted and approved by 22.12.2009. However, none of the river basin management plans have been issued yet. At the time the present article was written, some of the plans were under public consultation, whereas others are expected to enter into consultation in the next few months. Consultation shall last 6 months.

The Hellenic Council of State (Symvoulio tis Epikrateias), that is the Greek Supreme Administrative Court, has ruled that, since management plans had not yet been issued, permits to use water resources and execute water works may not be granted. The Hellenic Council of State has also ruled that while management plans are pending, permits could be granted in line with the programmes for water resource development, stipulated in previous Law No 1739/1987, but again provided that such programmes had been approved (see inter alia Decisions 1987/2010, 1125/2008 of the Hellenic Council of State). For the above reasons the Hellenic Council of State has been annulling issued permits.

At the same time, the Hellenic Council of State, has ruled that in cases of existing infrastructure (where water works had also been undertaken) which need to be modernised, it shall be deemed acceptable to draft and plan modernisation works (even where river basin management plans are not issued beforehand), so long as such works do not entail a significant increase in water consumption (see Decision 2639/2009 of the Plenary Session of the Hellenic Council of State).

On 13.07.2011 the Environment, Energy and Climate Change Ministry issued Circular no. 150673. According to this Circular, when an application for a permit is filed but the relevant river basin management plan has not yet been issued, the permit shall be granted on the condition that the work or activity to be undertaken is deemed to be compatible with the policy of rational water management and environmental protection applicable to the specific region. The Greek National Registry of Protected Areas must also be taken into consideration.

### Administrative and criminal penalties applicable to breaches of the provisions of L. 3199/2003.

L. 3199/2003 provides for administrative and criminal penalties for the following cases: pollution or other deterioration of the water status, breach of the law or of any other acts issued in fulfillment of this law, breach of the terms and provisions laid down in the permits:

- A fine of 200 to 600,000 euros is imposed according to the significance, frequency and relapse of the breach, independently of any criminal or civil liability or administrative penalties set by other provisions.

- In case of extremely significant pollution or deterioration of the water status and especially in the cases where the type or the amount of pollution or the extent or the significance of the deterioration constitute a threat of death or severe bodily harm or ecological perturbation or destruction, the fine may reach the amount of 1,500,000 euros.

- If a business or activity causes pollution or other deterioration of the water status, its operation may be temporarily prohibited until the adequate measures are adopted in order to permanently stop the pollution or the deterioration. Permanent interruption of its operation may be imposed if the party at fault does not comply with the imposed measures or if it is impossible to adopt adequate measures. A fine of 500 to 50,000 euros may also be imposed for each day such prohibition is violated.

- Criminal penalties shall also be imposed, in the above cases, according to L. 1650/1986.
Civil liability

According to the following provisions of civil law, any natural or legal person or other entity (acting as representative of the rights and interests of its members), with legal interest therein, may appeal before the competent courts for the protection of their rights and for damages for the pollution or deterioration of water resources:

- Art. 29 of L. 1650/1986: “any natural or legal person who pollutes or otherwise causes deterioration of the environment is liable to damages, unless that person proves that the harm caused is due to force majeure or to a third party’s intentional fault”. This provision provides for the polluter’s objective liability.

- Art. 6 of L. 2251/1994: This provision provides for objective liability of producers in case of damage to the environment caused by a defective product.

- Art. 57 of the Greek Civil Code: The right to water use (water being a public resource) as well as the profit gained from this use constitutes part of the right to personality. For the right to personality to be considered offended, it must be established a) that the right to use water has been impeded in such a way that its public use is distorted or annulled or a person’s health (physical or mental) is damaged and b) that the offence is illegal; in order to establish illegality, it is sufficient to show that by impeding the right to use water or by damaging a person’s health, the party at fault has acted in a way which is contrary to what law and order require or prohibit; there is no requirement for a specific provision of the law to be breached. This means that even if the party at fault has the right to perform a specific act or omission (e.g. in case an operator has been granted a permit to conduct a specific activity), if it is established that the right to use water is more important or that the act of the offending party is performed in an abusive way, then the party who suffers the offence is protected through the lawsuits for cessation of the offence, non-recurrence in the future (in case there is an imminent threat of recurrence), compensation [see below under (d)] and reparation of moral damages according to Art. 59 of the Greek Civil Code (See inter alia Decision 1158/2010 of Halkida Court of First Instance granting Interim Measures, Decision 77/2000 of Messologgi Court of First Instance etc.).

- Art. 914 of the Greek Civil Code: “Anyone who in violation of the law causes damage to another through his fault is liable to compensate them.”

Specific cases: water transfers and hydroelectric works

a) Transfer of water from one river basin to another

In view of the fact that river basin management plans had not been issued, L. 3199/2003 was later amended (in 2006 and in 2007). Its new provisions provided for the abstraction of water from a specific river basin and its transfer to another. This may be done in accordance with an approved management plan for the specific river basin district(s) (not be issued by the aforementioned Decentralised Administrations, but by a different authority) for the purposes of:

- Water supply to cities and villages, to satisfy imminent needs.

- The protection and improvement, both at quantitative and qualitative level, of surface water and groundwater bodies.

- The environmental enhancement of the various regions, taking into consideration the protection of habitats.

- Hydroelectric power production.

The relevant management plan should establish the availability and sufficiency of water resources after the transfer, as well as the sustainable use of transferred resources in the
receiving water basin, taking into consideration the need for a long-term protection of available water resources.

The above provision was challenged before the Hellenic Council of State, which ruled that it was not in conformity with Directive 200/60/EC. The Court also ruled that the transfer of water from one river basin to a neighboring one may be permitted as an exception in order to cover water supply needs, only if the receiving river basin cannot in any way cover its needs with its own water resources. The Hellenic Council of State has postponed the issue of a definite decision and referred the case to the Court of Justice for the issue of a preliminary ruling (Decision 3053/2009 of the Plenary Session of the Hellenic Council of State). At the time of writing the present article, no decision has been issued (C-43/10; on 13.10.2011 the Advocate General issued an opinion).

b) Small hydroelectric works

According to the jurisprudence of the Hellenic Council of State, permits for small hydroelectric works were also annulled in the same way as other permits for water resource use and execution of water resource exploitation works, because of the absence of management plans (or programmes stipulated in previous L. 1739/1978). For this reason L. 3199/2003 was further amended in 2009 to facilitate the issue of permits to use water and carry out water works prior to the issue of river basin management plans or programmes stipulated in previous L. 1739/1987, for cases of small hydroelectric works undertaken under specific conditions. According to the amended law, plans at sub-basin level shall suffice for the issue of such permits.
What are the basic regulations regarding the protection of forests and forest expanses?

The Constitution explicitly enshrines the protection of forests and forest expanses. In particular, the article 24 par. 1 provides: «Matters pertaining to the protection of forests and forest expanses in general shall be regulated by law. The compilation of a forest registry constitutes an obligation of the State. Alteration of the use of forests and forest expanses is prohibited except where agricultural development or other uses imposed for the public interest prevail for the benefit of the national economy. Furthermore, the article 117 par. 3 and 4 provides: «3. Public or private forests or forest expanses which have been destroyed or are being destroyed by fire or have otherwise been deeded or are being deforested, shall not thereby relinquish their previous designation and shall compulsorily be proclaimed reforestable, the possibility of their disposal for other uses being excluded. 4. The expropriation of forests and forest expanses owned by individuals or by private or public law legal persons shall be permitted only in cases benefiting the State, in accordance with the provisions of article 17, for reasons of public utility; but their designation as forests shall not be altered».

The above constitutional provisions guarantee a high level of protection of forests and forest expanses. The alteration of the forest nature of these expanses is practically unfeasible, whether they constitute public or private property, except in extremely borderline cases where the public interest imposes such an alteration. In these cases, a critical issue is raised concerning the identification of the areas later designated as «forests» or «forest expanses». This issue is directly clarified via the mere Constitutional text which, following the Constitutional Revision of 2001, includes this identification in the form of an interpretative clause which accompanies article 24. According to this: «By forest or forest ecosystem is meant the organic whole of wild plants with woody trunk on the necessary area of ground which, together with the flora and fauna coexisting there, constitute, by means of their mutual interdependence and interaction, a particular biocoenosis (forestbiocoenosis) and a particular natural environment (forest-derived). A forest expanse exists when the wild woody vegetation, either high or shrubbery, is sparse».

The legal framework concerning forests and forest expanses is complemented by the provisions of the law 998/1979, as applicable after a series of amendments. These provisions specify the afore-mentioned constitutional definitions, establishing at the same time specific regulations on the protection of forests and forest expanses. These regulations are framed by the Decree-Law 86/1969 («Forestry Code»); some of its provisions continue to be applicable. It is noteworthy that, in Greece, there is not yet
an integrated Forest Registry which is a fact that results in increased uncertainty and insecurity on the forest nature of the areas outside urban planning.

What are the legal consequences induced by the forest nature of an area?
The forest nature of an area practically results in its utter bounding since alteration of the forest nature is not, in principle, permissible, while any destruction of forest vegetation and, therefore, change of forest nature entails severe administrative and criminal penalties to those causing them (articles 45-47 and 71, law 998/1979). The same applies in respect of areas declared as reforestable. Additionally, the (rebuttable) presumption of ownership to the State is applicable on forest expanses. Moreover, actual adverse possession at the expense of the State is not possible since 1915. Therefore, actual adverse possession at the expense of the State demands completion of its legal conditions before the year 1915 in order to be legally bounding (i.e. decisions of the Supreme Court of Greece 400/2011 and 102/2010). After all, fragmentation of a forest area is only legally accepted as a result of a permission issued by the Minister of Agriculture (article 60 par.1, Legislative Decree 86/1969), while its conveyance and relevant land registration based on the title of ownership is, in principle, not possible if not accompanied by a statement in accordance with which the State will not claim full ownership (see indicatively decision 1330/2008 of the Supreme Court of Greece).

How can we ensure certainty of whether an area is of forest nature or not?
As already mentioned Greece has not yet adopted a forest registry which, in many cases, results in serious doubts on whether an area is of forest nature or not. Furthermore, the above constitutional definitions have not yet pointed a way to settle the issue in a definite way. In many cases, the local forest services are termed with exaggeration of stringency when characterizing land as forest. In fact, this is independent of the time of possible existence of forest vegetation.
The law (article 14, law 998/1979) establishes a special administrative procedure for designating an area as forest or not. Specifically, the chief Forester rules, when requested, on the specific character of an area; however, his decision may be challenged before the Administrative Committees Resolving Forest Disputes, whose verdicts are brought before the competent administrative courts (Administrative Courts of Appeal). Unfortunately, these procedures are often proven to be time-consuming.
According to settled case-law of the Council of the State: «The Chief Forester’s and relevant committees’ decisions on the nature of a specific area as forest or not must be specially reasoned on the grounds of the morphology of the territory, the type, composition, density and particular characteristics of the vegetation. This reasoning may be supplemented by other data in the folder» (C.o.S. 681/2011, 1156/2009, 2959/2006, 2997/2003 etc). All decisions of the Chief Forester and the Committees concerning the forest nature of an area are irrevocable (see C.o.S. 681/2011, 1518/2010, 3627/2003 κ.ά.). Furthermore, the supreme administrative court of the country has regulated, in its settled case-law, regarding the areas declared as reforestable, that «each deforested forest area, whether public or private, shall be declared compulsorily as reforestable under the mere objective observation of the existence of the conditions laid down in the aforementioned constitutional provisions. Exception of the obligation to reforest an area is only possible if the forest or the forest area had been deprived of their forest character.
before the 11th of June of the year 1975 due to a legitimate cause and not as a result of arbitrary and illegal human activity; reverse of the situation created is, consequently, rendered impossible. However, the decision for reforestation must be fully reasoned as regards the designation of an area as forest or not; reasoning may be supplemented by other data in the folder» (C.o.S. 2452/2010, 2405/2009, 291/2009, 666/04 etc).

How does the jurisprudence of the courts implement the rules on the protection of forests and what are the corollaries of the development of investment projects?

A key feature of the jurisprudence of the Council of State is the recognition of priority to the protection of the environment2. This tendency is by all means dominant in the protection of forests and forest expanses which practically lies in the core of the protection of the natural environment. In some cases, the strict application of the rules for the protection of forests results in the adoption of inclement solutions and disproportionate burdens of property in a manner that is, in fact, inconsistent to the right to property (article 17 of the Constitution and article 1 of the First Protocol of ECHR). The Administration often characterizes at ease an area as forest, despite the fact that its forest nature has been altered many decades ago. When applying the principle «once a forest, always a forest», the Council of the State tends to prefer solutions not always compatible with the rules of the protection of property. Exceptions are found as regards those areas that have been deprived of their forest character for a legitimate cause, before the entry into force of the Constitution in 1975. In recent years, the case-law produced by the Council of State is also more flexible regarding the installation of electricity-production from Renewable Energy Resources establishments, as is the wind and photovoltaic parks. In these cases, it enables the development of such activities in forests and forest expanses3.

It is worth noting that the law 3900/2010 (article 47) transferred competence over matters relating to the designation of areas as of forest nature or not and declaration of areas as reforestable from the Council of State to the Administrative Courts of Appeal, while it has equally provided for the legal ability to exercise appeal before the Council of State against decisions of the Administrative Courts of Appeal. The Administrative Courts of Appeal are expected to comply with the jurisprudence of the Council of State. In addition, it is likely that a lag period of adjustment may appear until the familiarization of the Administrative Courts of Appeal in these areas is achieved. This is certainly a legislative choice, which will probably lead to even greater deceleration in the judicial settlement of their affairs and will exacerbate the lack of security and legal certainty.

What are the prospects for improvement of the jurisprudence of the Courts in this field?

The financial crisis that emerged in recent years has rendered more widely accepted the idea that the development of investment projects requires decrease of the severity


3. See indicatively CoS3816/2010, 1508/2008 etc. On these issues see Apostolos Papaconstantinou, The legislative regime for renewable electricity resources, www.nomosphysis@org.gr (July2004), Georgios Papadimitriou/ Apostolos Papaconstantinou, Reformation of the legislative framework for the A.P.E. and configuration of best practices, particularly for wind parks, www.nomosphysis@org.gr (July 2004).
of the jurisprudence of courts in this area. This jurisprudence tends to be, ultimately, proven to be a competitive disadvantage in comparison with other European countries. Furthermore, it is not possible to consider as reserved any areas that have been practically deprived of their forest nature for decades. It is, however, required that their investment management is consistent with the need to ensure a high level of protection of the natural and, in particular, the forest environment. The proper direction of the final choices demands, in this case, strict compliance with the principle of sustainable development which imposes a balance between the socio-economic development and the environmental protection. The Supreme Administrative Court will be the main instructor regarding this evolution by adopting, on necessity, a renewed approach of law and value weighting in this area. Finally, it is noted that the integration of Forest Maps in preparation, according to the provisions of the law 3889/2010, will inaugurate the required security and certainty of law in this area and, therefore, will allow easier development of investment projects.

In what way are the sea and coastal areas protected?

Greece is privileged with a coastline, the total length of which extends approximately to 17,000 kilometers. This coastline covers, almost half of the total coastline of the Mediterranean. The marine Mediterranean habitats as well as the rarely found biodiversity hosted by the coastal areas and the numerous islands constitute the greater natural wealth sources of the country, which probably award leadership of the country, regarding this area, in a global perspective. It is, therefore, clear that the effective protection of the sea and coastal areas is listed as one of the major challenges for ensuring the sustainable development of the country.

The legal framework for the protection of the sea and coastal areas is, primarily, based on the article 24 of the Constitution which constitutes the backbone of the legal protection of the natural environment. According to this: «The protection of the natural and cultural environment constitutes a duty of the State and a right to every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development». The provisions of the article establish the fundamental principles of the environmental protection; they mainly refer to the principle of sustainable development (in conjunction with the article 106 of the Constitution), the prevention principle, the precautionary principle and the principle that “the polluter pays”.

Furthermore, the constitutional protection of the natural environment of the insular regions is complemented by the provisions of the articles 101 and 106 par. 1 of the

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4. According to the interpretive clause attached to the article 101 of the Constitution: «The common legislator and the administration when regulating share the obligation to take into account the particular conditions in the island areas».

5. According to the article 106 par. 1 of the Constitution the State «shall take all measures necessary ...to promote especially the economy...of insular areas».
Constitution. The combination of these provisions with the article 24 of the Constitution results in the principle of sustainable development of insular regions⁶, which constitutes a more specific aspect of the general principle of sustainable development. However, the particularities characterizing the insular regions generally confer a stand-alone content to this principle. Hence, there forms a grid of constitutional rules, the combination of which structures the regulatory content of the principle of sustainable development of insular regions⁷.

The aforementioned constitutional provisions are particularized through the law 1650/1986 on the protection of the natural environment and, regarding the protection of sea and coastal areas, the law 2971/2001 for the foreshore and beach and, more recently, the law 3983/2011 («National Strategy for the protection and management of the marine environment»)⁸.

What are the fundamental characteristics of the current legislative framework?

The protection ensured by the aforementioned legislative provisions is, undoubtedly, of especially high standard. The construction of works and installations in coastal areas is governed by a strict legal framework. In particular, according to the law 2971/2001, the foreshore, the beach, the shore and the riparian zone constitute properties of common use with ownership of the State which is responsible for their protection and management. The protection of the ecosystem of these zones is also a responsibility of the State, while their main destination is the free and deprived of any obstacle access to them. Exceptionally, the foreshore, the beach, the shore and the riparian zone can be of practical use when serving public environmental and cultural purposes as well as the broader public interest (article 1). Their «simple use» is also a possibility, provided that it does not violate their intended purpose as properties of common use and causes no alteration in their natural morphology (article 13). The construction of buildings and, generally, of any other works is not permitted in the foreshore, the beach, the shore and the riparian area with the exception of the pursuit of the above objectives.

Moreover, the law 3983/2011 specifies the legal framework for the adoption of the necessary measures aiming at achieving or maintaining proper environmental status for the marine environment until the year 2020 the latest. This purpose promotes the development and implementation of strategies for the sea through the adoption of measures which: a) ensure the protection and preservation of the marine environment, prevent its deterioration or, when possible, restore the marine ecosystems in areas where they have suffered adverse effects, b) prevent and reduce the depositions in the marine environment, with a view to gradually eliminate pollution as defined in paragraph 8 of

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the article 4, to ensure that there will be no significant impacts on or risks for the marine biodiversity, the marine ecosystems, human health or legitimate uses of the sea. For the management of human activities, the marine strategies follow the ecosystemic approach which ensures that the total pressure of these activities remains at levels consistent with achieving good environmental status and that the ability of marine ecosystems to react to human-provoked changes is not jeopardized, while at the same time enabling the sustainable use of marine goods and services by both the present and future generations. Furthermore, the aforementioned law provides for the elaboration of a program of measures attaching «due importance to the sustainable development and, particularly, to the social and financial consequences of the above measurements». These programs of measures include, in accordance with the article 12 par. 4 of the law, «measures for the protection of the area, which contribute to the creation of coherent and representative networks of protected marine areas and are sufficient to cover the variety of ecosystems composing these areas, such as the Special Preservation Zones established with 33318/3028/1998 joint ministerial decision and the Special Protection Zones established with 37338/1807/2010 joint ministerial decision as well as the protected marine areas».

Finally, the article 21 of the law 3983/2011 provides, with a reference to the provisions of the articles 28 and 30 of the law 1650/1986, for the imposition of criminal and administrative penalties to «anyone who causes pollution of the marine environment with an act or omission and in violation of the measures laid down by this law and the regulatory acts adopted in its implementation».

What is the importance of the case-law produced by the Council of State in the area of the protection of the sea and coastal areas?

The jurisprudence of the Council of State in this area is consistent with the general tendency of the Court to protect the natural environment. Perhaps, it would not be an exaggeration to state that the case-law developed by the Supreme Administrative Court of the country has played, in this area, a decisive role. A key feature in its structure is the acknowledgement of priority to the protection of the environment9. The control of legality, exercised by the Court, on the approval acts of environmental conditions and, generally, of environmental licensing is strict; in many cases greater in-depth. The rigid application of the theory of the «environmental acquis» in a way that leaves no room for a substantial rehabilitation of a more equitable balance between environmental protection, on the one hand, and the protection of property rights and promotion of financial development, on the other hand, as the principle of sustainable development imposes, is indicative of the afore-mentioned stringency. According to settled case-law of the Court, the natural environment has developed into separately protected goods in order for the ecological balance and preservation of natural resources to be ensured in favor of subsequent generations. When taking measures of environmental protection, the legislative and executive power bodies, with respect of the principle of sustainable development, ought

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to take into consideration more factors regarding the wider national and public interest, such as those relating to the purposes of financial development, management of national wealth, aid for regional development and ensuring labor to citizens, i.e. purposes with constitutional welfare background. However, the pursuit of these purposes and the weighting of the relevant legal goods must be combined with the obligation of the State to ensure the protection of the environment in such a way as to ensure the constituent and, at the same time, community-legislator intended sustainable development. In addition, when weighting factors, in compliance with the prevention and precautionary principle in the field of environmental protection resulting from the above provisions, the competent state instruments must take, primarily, into account the existence of any special risk for the natural environment emerging from the construction and operation of a particular project or the development of a specific activity and not, therefore, grant approval in case of a substantiated observation of that particular risk - including the imminent one from any improper functioning of the project - surpassing, in an obvious way, any expected benefits from its operation. However, in any case, and in order for the evaluation of the situation to be consistent with the need to protect each conflicting legitimate goods, it is essential to expose and sufficiently account, on the one hand, the way and method of construction and operation of the concrete establishment and, on the other hand, the particular nature of public interest, which will be hopefully served by the project or activity, since the above imposed evaluation reflects the type and extent of the imminent harm as well as the nature of the need satisfied through the implementation of the project.\footnote{C.o.S. plenary 462/2010, 613/2002, 3478/200 etc.}

In particular, as regards the protection of the sea and coastal areas, the Court seems to be extremely strict, especially in view of the nature of these regions as sensitive ecosystems in need of increased protection.\footnote{See Apostolos Papaconstantinou, Protection of sea and coastal areas in the case-law of the Council of State in: www.nomosphysis.org.gr (July 2003).} The jurisprudence concerning the foreshore is also characterized as extremely consistent and rigorous. According to its judgment, the provisions of the law 2571/2001 «aim at achieving immediate and effective protection of the foreshore and beach and impose the restoration of their initial form, which has been distorted due to the unauthorized construction of all kinds of technical projects, buildings or constructs (see CoS 2048/2000, 374/1999). The above entail an obligation to the Administration to impose demolition of arbitrary buildings constructed within the limits of the foreshore independently of the time of their construction...» (CoS 50/2010, 2048/2000, 571/1999, 374/1999, 3333/1983).

How can combining, within the context of the principle of sustainable development, the protection of the sea and coastal areas, on the one hand, and development of investment projects on the other hand, be actually achieved?

The rigorous legislative framework regulating the protection of the sea and coastal areas is often a serious obstacle for the development of future investments. This is often amplified by the jurisprudence of the Council of State which clearly acknowledges the priority to the natural environment in relation to socio-economic development. This legal issue can be dealt with, from the point of view of interested investors, through appropriate Studies which substantiate in a scientific way the securing of the protection
of these natural resources, provided of course that this is rendered possible. What is practically required in this case is the harmonization of the investment project and ensuring a high level of protection of the sea and coastal areas. All legal obstacles caused in view of the development of relevant investment projects can be met with through legal and technical means, both preventive and punitive. Specifically, it is essential that, during the preparation of investment projects, any existing restrictions for the protection of the natural environment are taken into account. Thus, it is principally necessary to examine the legal framework governing this area, as well as the conditions laid down for the use of the land in order to calibrate the compatibility of the investment project with them. It is noted that the alteration of land use and the lifting of restrictions imposed for the sake of protecting the natural environment is, in view of the strict jurisprudence of the Council of State, particularly difficult. However, in most cases the provision of special conditions in the Environmental Impact Study relating to the protection of cultural property may have a positive effect when dealing with possible risks for the investment. It is, subsequently, an incontestable fact that the adequate technical and legal documentation of these studies is an essential condition for the successful judicial troubleshooting, if needed.
Environmental Protection and Industrial Development. What is the attitude of the Greek State?

The Greek Constitution considers the need to actively protect the environment and to plan in a sustainable manner to be an obligation of the State (article 24). In this way environmental protection is placed within the constitutionally protected human rights. This principle guides all legal approaches to the matter (legislative and case law). At the same time, the State must secure social peace and must plan with the aim to ensure economic and regional development and take all necessary measures to utilize all sources of national wealth (article 106). Both, environmental protection and economic development, being in need for protection, they must co-exist as envisioned by the principle of sustainable development.

What are the rules for the harmonious co-existence of Environmental Protection and Industrial Development in Greece?

The basic way to achieve industrial development along with environmental protection is to make sure that all stages of the life cycle of a project are carried out through responsible planning and the application of Best Available Techniques. The actual siting of an industrial facility should happen in compliance with the available planning rules. The environmental permitting will ensure the application of the prevention principle through the process of a thorough, methodical and scientific Environmental Impact Assessment (EIA) subject to public consultation. Careful design of a project should aim at the minimization of its environmental footprint; sustainable use of natural resources; protection of the relevant environmental parameters; application of all necessary measures from construction to the end of production life; and reclamation of the industrial site. Application of environmental management systems including environmental monitoring and reporting will help all stakeholders (project owners, regulators, local communities) to cooperate within the framework of Corporate Social Responsibility and sustainable development. At a broader level, responsible planning and policies of industrial companies calls them to take prevention and mitigation measures to further improve their environmental performance, whether directly through specific initiatives during the project design and operation stage or indirectly through state established green funds. And last, in order to monitor performance and compliance, a good environmental auditing system is needed. In case of breaching of regulations administrative and criminal sanctions must be in place. All the above is regulated in Greece either through specific laws or in a soft law manner. This paper aims at highlighting all these aspects.
**What are the goals set by the Special Land Plan for Industry?**

Greek planning laws provide for plans drawn at national and regional level setting the overall development policies of the country/region respectively. Special plans are sector specific national plans.

The General Land Plan for Greece, (Government Gazette Issue GG/128/A/03.07.2008), lists the overall factors affecting the long term development of the country for a 15 year period. The General Plan makes specific reference to the role of the Industry for the metropolitan and regional development of the country and underlines the need for the installation of industry in organized areas. To specify the above, the Special Land Plan for Industry, issued for a 5 year period in 2009 (GG/151/AAP/13.04.2009) lists the industrial fields that are developed in Greece and sets the goals for industry, which must be competitive, decentralized and organized at planning and environmental level (article 3). The Special Plan provides guidelines for the spatial organization of industry separately for each region at prefecture level.

**What are the planning rules for industrial activities?**

Over the years there has been an effort to restrict industrial activities to organized receptor areas.

Industrial or handicraft activities of higher or lower impact and low, average and high disturbance (judged according to the facilities’ production rate or their installed power as per the criteria set in Decision No.13727/2003, GG/1087/B/2003, expected to be revised to reflect recent legislative changes), professional workshops, logistics and storage establishments, business activities of the secondary and tertiary sector (with the exception of shopping centers), applied industrial, energy, metallurgical or high tech research laboratories, electricity plants may be located in organized receptors – lately regulated as ‘business parks’ under law 3982/2011. Many laws in the past have established different categories of such organized receptors such as industrial areas and parks, biotechnical parks, industrial and business areas (known as VI.P.E., VI.PA., VIO.PA, VE.PE. established according to Laws 4458/1965, 742/1977 and 2545/1997). Recent law 3982/2011 embraces all these areas along with ‘business parks’ and calls them ‘organized receptors for handicraft and business activities.’ Business Parks aim to enhance regional and sustainable development, upgrade infrastructures, promote business development and employment, increase the competitiveness of the companies operating in such parks and improve the quality of life of neighboring communities (L.3982/2011, art. 42).

**Are there different categories for Business Parks?**

The types of Business Parks envisioned in L.3982/2011 are classified according to the level of disturbance of the facilities to be installed within their boundaries: Type A accommodates activities of all levels of disturbance; Type B relates to average and low disturbance activities; Type C is for low disturbance or unclassified activities; a Special Type is provided for the installation *inter alia* of Green Businesses etc.

**Are industrial or handicraft facilities allowed in other areas?**

Although it is desired that industrial activities are planned within such organized receptors, this is not always necessary or possible. For example, smaller installations may be planned within towns (in specifically designated areas) or close to their boundaries, as
they may relate to specific markets, such as professional workshops and manufacturing establishments. In other cases, planning may depend on the special characteristics of an activity, for example, mining depends on the actual location of the reserves (mining is not considered as part of the core industry but is covered by industry to the extent that it is closely connected to it, Special Plan Point 2).

The main issues examined in case of planning in areas other than organized receptors relate to the application of archaeological, forestry and other environmental parameters, which may restrict the permitting of the industrial activity in such areas. Especially regarding NATURA areas, the biodiversity law (L.3937/2011) forbids the installation of high disturbance industrial facilities or those falling in the scope of Directive 96/82/EC. As far as settlements are concerned, urban plans usually provide detailed land uses for the establishment of such activities. Law 3325/2005 also provides for the distances that must be kept between towns and such activities (500 meters for low disturbance activities).

What are EIAs and how do they serve environmental protection purposes?

Pollution impacts are best avoided at source. The Prevention Principle proposes measures to protect the environment at an early stage as it aims to prevent any damages before they occur – rather than repair them (EIA Directive 85/337/EEC). Environmental Impact Assessments are assessments of a project’s potential impacts before its implementation. EIAs are therefore one the most important tools for environmental protection, embodying the prevention principle, as they take into account the existing environmental characteristics of receiving areas, explore all potential impacts of the industrial project on parameters of the natural and manmade environment and propose measures to avoid them through Best Available Techniques and thus they help avoiding and preventing adverse impacts. If this is not entirely possible, EIAs propose measures to control or mitigate such impacts.

How is all this applied in practice?

All projects with potential environmental impacts are assessed through specific environmental studies (art. 2, L.4014/2011). The environmental studies must provide: information for the allowed land uses in the area; a clear description of the project and its emissions; the alternative options that were examined; data on the natural and manmade environment (flora, fauna, habitats, soil, water, air, climate, local architecture, cultural heritage and archaeological findings/sites and landscape); a description of the potential significant impacts as to natural resources, emissions and waste disposals and generally all environmental measures; an analytic description of the proposed measures; a draft environmental management system and a monitoring system(Annex II of L.4014/2011).

In case of planning in Natura 2000 areas, a special assessment is necessary, following the provisions of art. 6 par. 3 of the Habitats Directive (92/43/EC) and art.10, L.4014/2011. Such studies are approved by the competent authorities, which issue approvals to impose environmental terms for the operation of a project. Environmental terms finally decide and set restrictions and conditions on the realization and the operation of a project, the technologies to be applied and the prevention or mitigation measures to be taken. The environmental terms must be in line with environmental and planning laws, environmentally sufficient, directly related to the project, fair, precise, binding and measurable.
Such approvals are valid for 10 years and longer if the permitted projects have environmental management systems in place (14 years for EMAS, 12 years for ISO 14001). The environmental assessment is carried out in one stage, unless the project owner desires a “Preliminary Definition of Environmental Requirements”, provided by either the Ministry or the Periphery, according to the specific category of the project. The law sets a strict time schedule for the completion of the permitting process (appr. 5-6 months for category A1 normal complexity projects and 4 months for category A2 projects).

Are all projects handled in the same way?
Projects are listed in two broader categories. The first category (Category A) refers to projects that may cause significant adverse environmental impacts (categories A1 for strong adverse impacts and A2 for less strong impacts). The second category (Category B) refers to projects of non-adverse local environmental impacts. EIAs in the sense explained in this paper are necessary only for category A projects. The classification of projects in all categories is done according to the provisions of a specific decision which is awaited shortly (public consultation was completed on 28.10.2011 - Law 4014/2011 is a recent law amending the previous legal framework and many of its provisions are not fully enforceable yet. Previously, this classification was regulated by Decision No.15393/2002, GG/1022/B/05.08.2002.)

Category A1 projects are permitted at the Ministry of Environment and category A2 projects at the respective Periphery.
Category B projects or activities are subject to Standard Environmental Commitments (SEC) which are issued by the competent authority issuing the operating permit for the facility following a statement of the Engineer or the Owner of the facility (art.8, L.4014/2011). Specifications for such SEC are expected to be issued before June 2012.

What is responsible design and what are Best Available Techniques?
Directive 2010/75/EC on industrial emissions lays down rules for an integrated approach to prevention and control of emissions into air, water and soil, waste management, energy efficiency and prevention of accidents. These rules apply to industrial facilities subject to Integrated Prevention Pollution Control (IPPC - energy industries, production minerals and metals industry, chemical industry, waste management, paper industry, tanning of hides etc, intensive rearing of poultry or pigs, preservation of wood and wood products with chemicals and others). The permit for the operation of the above facilities includes all the necessary measures to achieve a high level of protection of the environment as a whole and it must also include emission limit values for polluting substances set on the basis of Best Available Techniques (BAT), allowing sufficient flexibility to the competent permitting authorities to set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the Best Available Techniques. In order to determine BAT and the level of emissions from industrial activities, BAT reference documents are drawn up. Reference to the use of BAT in industry is made in a number of legal tools in Greece including law 4014/2011 on Environmental Permitting and its forthcoming decision on the classification of projects and activities (above).

What are Mitigation Measures?
In case of adverse impacts additional measures may be imposed, which may also relate to duties to be paid to the Green Fund or other state authorities. It is also often that a
project owner enters into voluntary agreements with the local communities or other institutions so as to offer environmental related help or other offsets.

**Are other permits necessary prior to project operation?**
Recent Laws 3982/2011 and 4014/2011 have simplified the permitting process for the installation and operation of industrial or handicraft facilities. In the past, installation, operation, waste disposal permits etc. were also needed for the operation of industries. Installation and operation permits are no longer required as separate permits for low disturbance facilities (Art.19, para 2, L. 3892/2011) or for facilities installed in organized receptors. Average and high disturbance industrial facilities require (prior to their establishment) an installation permit, which is issued following an inspection by the competent authority and is valid for three years (with the possibility for a 6-year extension). Operation permits are issued following an inspection of the authorities conducted within two or three months from the date of the respective application for the average and high disturbance facilities respectively. Operation permits are of indefinite validity. The above do not apply to electricity production plants and mechanical facilities in Mines and Mineral Processing Plants installed in the Mine or Quarry boundaries. These are governed by specific laws (Law 2244/1994 for the electricity plants and LD 210/1973 & Law 1428/1984 for mines and quarries). Law 4014/2011 has also simplified the permitting of industries, as various other permits are now merged with the EIA stage, such as permits for the management of solid waste, the disposal of effluents and the intervention in forestry areas (art. 12).
Building permits are separate and are issued following any environmental permits.

**Are there Monitoring & Auditing Procedures?**
Audits may take place at the permitting or the operation stage. At the permitting stage audits are preventive in order to ensure that the proposed terms are sufficient. At the operation stage audits may be regular or extraordinary in order to control and audit the environmental performance of a permitted project and to examine compliance with environmental and operating permits. Inspections and periodical auditing are carried out by registered environmental and other inspectors. In case of deviations from or non-compliance with the terms of the issued permits there may be penalties or even suspension of operations.

**What about Environmental Liability?**
Prevention and remediying of environmental damage is enforced through the furtherance of the “polluter pays” principle. An operator whose activity has caused environmental damage or an imminent threat of such damage is to be held financially liable according to PD148/2009, which harmonized Directive 2004/35/EU. This legal tool motivates industrial operators (IPPC Industrial installations, Waste Management activities, Incineration Plants etc.) to adopt measures and develop practices to minimise the risks of environmental damage, so that their exposure to financial liabilities is reduced. The operator of the above industrial facilities may make use of private insurance schemes or other forms of financial guarantees, in order to cover the relevant potential liabilities. Specific criteria set forth in Annex I to PD148/2009 are used to measure significant adverse environmental baseline condition changes and Annex II sets the framework for the remedying of environmental damage.
What are the penalties in case of environmental damage?

For all people or entities that cause pollution or environmental degradation in general (which includes environmental damage according to PD148/2009) there may be sanctions: administrative, i.e. fines between 500 and 2,000,000 Euro, according to the seriousness, frequency and kind of the violation (art.21, L.4014/2011); criminal, ranging from 3 month to 2 year imprisonment, which may reach up to 10 years in case of serious injuries or human death (art.28, L.1650/1986). EU Directive 2008/99/EC regarding the protection of the environment through criminal law provisions is expected to be harmonized into Greek Law shortly.

The above is applicable notwithstanding any civil law claims for damages.

Concluding:

The latest laws for environmental permitting and the operation of industries in Greece, all issued in 2011, are updated and enhance the sustainable development of industry: they are flexible, they have simplified permitting processes, they embrace Best Available Techniques for the prevention of impacts, they utilize private tools such as accreditation systems, they require regular audits and they allow levels of discretion to public authorities. This along with developments on planning laws and procedures that encourage investments (such as the framework for strategic investments and for state private properties) is expected to create a more investor-friendly environment, which will cater for industrial development with care and respect for the environment.
Which is the existing legal framework for waste management?

The existing legal framework is based on the Joint Ministerial Decision (JMD) 50910/2727/2003 (GG B’ 1909/2003) “Measures and Conditions for Solid Waste Management - National and Regional Planning Management in compliance with the provisions of the Directive 91/156/EEC”. This JMD sets the objectives and principles of management of solid waste, including the requirements of the national and the regional plans for integrated waste management. Furthermore, the JMD foresees the responsible bodies for managing solid waste (FoSDA) and the measures for the rehabilitation and use of disposal sites. Article 5, par. 1 defines the guidelines for the management of solid waste throughout the country and suggests appropriate the measures which promote (under d.) the use of waste as an energy source. Article 11 provides for the obligations of the wasteholders in accordance to Law 2939/2001 (GG A’ 179/2001). The new framework Law on waste management, which transposes the Waste Framework Directive 98/2008 is completed and currently in passing by the Greek Parliament. After its approval it will simplify, modernize and clarify the existing framework. The adoption of the upcoming Law, combined with Law 3854/2010 (GG A’ 94/2010), relating to alternative management of specific waste streams, will provide a comprehensive legal framework for waste management.

Which administrative body is responsible for the waste management?

The regulatory framework for the waste management since 01.07.2011 is set in the reforming Law for the administrative restructuring 3852/10 (GG A’ 87/2010) as follows: The Municipalities manage the urban waste (art. 94, nr. 25) in accordance to the regional Plan of the Prefecture (art. 186, nr. 29) which is scheduled according to JMD 50910/2003. The above framework foresees the founding of union societies consisting of Municipalities within a Prefecture through a Presidential Decision (PD), which will automatically take over all responsibilities from the member Municipalities.

Which competency do Municipalities have?

The Municipalities (> Dimos) are legally considered as first grade administrative bodies. The tasks of the 325 Municipalities in Greece are generally provided in the Presidential Decree 410/1995 and Law 3852/2010. Especially in relation to waste management the Dimos is competent for the Wastewater- and the Waste disposal Management.

Which competency do Prefectures have?

The Prefectures (> Periferia) are legally considered as second grade administrative bodies. The tasks of the 13 Prefectures in Greece are generally provided in Law...
The powers of the Decentralized Administration “(> Apokentromeni Diikisi) in general are contained in Article 280 of Law 3852/10. Within the Office of the General Secretary of the Decentralized Administration sits the Decentralized Management Directorate for Spatial and environmental policy, which consists of three sections: Division of Monitoring and Protection of Water Resources and Division of Environment and Spatial Planning. The Division of Monitoring and Protection of Water Resources is responsible for collecting and processing data in quantity and water quality, monitoring and controlling the water quality parameters and quantitative status and emissions of pollutants into waters to protect against contamination and decontamination of water. The Division of Environment and Spatial Planning is responsible for the specification of the environmental guidelines, coordination of actions to monitor and protect the environment, the process of preliminary environmental assessment and the evaluation of projects and activities, the approval of environmental terms of projects and activities.

Helpful information in English referring to business and investment environment in Greece may be found on the user-friendly website of the Ministry of regional Development and Competitiveness on http://www.startupgreece.gr/

A wizard concerning the procedures for the operation of a waste management project from the conception of the project until the construction and operation launching can be found on http://www.mou.gr. The wizard includes a summary record of all proceedings and actions required to prepare comprehensive project management waste from the conception of the project until the construction and launch operation, in association with the respective responsible for any action bodies and relevant legislation that regulates these processes.

The contractor needs an approval for the land use at the beginning. Afterwards the purchase of land is required. A preparatory study of the project and the Environmental Impact Assessment has to be declared in order to get the approval of envi-
Environmental conditions. Law 4014/2011 (GG A’ 209/2011) provides a clear scheme of the approval procedure. After the auction takes place and the contractor is selected, the construction of the project may begin.

How can a Firm take part in a competition for waste management?

Which are the general conditions of participation in an open competition?
The competition is open to natural or legal persons or associations of these individuals or consortia, domestic or foreign, which are engaged in providing the related services. Unions are not required to obtain a specific legal form in order to bid, but are obliged to do so if selected, before signing the contract.

Can waste treatment projects be developed through PPP’s?
The debate on PPP in public services began in Greece officially on 2005 through publishing Law 3389/2005 (GG A’ 232/2005). Since then there is an increasing interest for PPP’s in solid waste management. The Greek Government has initiated the process of an international public tender for the appointment of a contractor for the treatment and management of the Urban solid waste in the Attica region (www.patt.gov.gr), in Kozani and Thessaloniki (www.sdit.mnec.gr). The projects are proposed to be implemented through public-private partnerships (PPP), according to Law 3389/2005. The Greek State will contribute to funding for the project with community support an estimated 30% of project cost. The contractor will be paid based on the amount of incoming waste to achieve specific environmental objectives including the recycling targets and quality characteristics.

What is the cost of solid waste treatment?
The current level of treatment tariffs ranges between 15 to 45 €/tone. The per tone charging is provided in article 9 of Law 3854/2010. The cost differs in rural and urban areas. The low end reflects the cost in metropolitan cities as e.g. Athens and the high end in integrated waste management facilities as e.g. those in Chania Crete. There is no landfill tax on similar financial incentives and the most attractive options are related to the renewable energy technologies and especially to anaerobic digestion. The pricing of power generated from renewable energy units is provided in Chapter D, article 13 of Law 3468/2006 (GG A’ 129/2006).

Where can the National plan for waste management be found?
Any project must be provided from ESDA in order to be implemented. At the moment an updated ESDA is in the phase of development.

**How advanced is Greece in recycling issues?**

After the Waste Framework Directive 98/2008 was published the European Union required from Member States to promote recycling programs in order to implement waste prevention and management. Two years later a new Law was published in Greece [3854/2010] referring the amendment of the former legislation on recycling. The National Agency on Alternative Management of Packaging and Other Products (EOEDSAP) is launched, amending the operating of the approved recycling systems to ensure the smooth functioning of the market and improve effectiveness. In packaging waste the national recycling performance is on the road to cover all EU targets. In organic fraction recycling the system just started being developed (www.ypeka.gr/ENVIRONMENT/RECYCLING).

**Which alternative Management Systems are provided?**


**Which is the regulatory framework for bio-degradable waste?**

The JMD 29407/3508/2002 (GG B’1572/2002), incorporating into national Law the EU Directive on the Landfill (1999/31/EC) is progressively increasing targets for diverting biodegradable municipal waste from the soil disposal starting in 2010. The targets set for the management of biodegradable waste are:

- By July 16, 2010, biodegradable municipal waste going to landfills was planned to be reduced to 75% of the total amount (by weight) of biodegradable municipal waste produced in 1995.
By July 16, 2013, biodegradable municipal waste going to landfills must be reduced to 50% of the total amount (by weight) of biodegradable municipal waste produced in 1995.

Until July 16, 2020, biodegradable municipal waste going to landfills must be reduced to 35% of the total amount (by weight) of biodegradable municipal waste produced in 1995. The calculation basis is the following:

- The year 2010, biodegradable waste diverted from the landfill should not be less than 1,100,000 tons.
- The year 2013, biodegradable waste to be diverted from the landfill will not be less than 1,950,000 tons.
- The year 2020, biodegradable waste to be diverted from landfills will not be less than 2,700,000 tons.

How can urban wastewater be reused?

According to the JMD 145116/11 (GG B’ 354/2011) the wastewater reuse shall apply on urban liquid waste and industrial wastewater as defined in the JMD 5673/400/1997 (GG B’ 192/1997). The reuse may lead to production of drinking water, usually through mixing of the elaborated water with clean underground aqueous systems, and production of irrigating water allowed for agricultural use. Further the Joint Ministerial Decision determines the measures, procedures and processes for the reuse of treated wastewater.

Who is responsible for the collection and treatment of hospital waste?

Liable for the collection and general management of hospital waste are the owners and their producers. The JMD 37591/2031/2003 (GG Β’ 1419/2003) determines the measures and processes for the management of hospital waste. There is already draft legislation for the management of hospital waste, which needs to be reformed in order to be compatible with the new framework Law on waste management. According to the Presidential Decree 8668/2007 Approval of National Planning Management of Hazardous Waste, the required actions to be taken for hazardous medical waste include treatment outside the health units, incineration in appropriate facilities and disposing of waste in Landfills, depending on the risk. Alternatively, if the medical waste is purely of infectious nature, sterilization inside or outside the health units is provided and afterwards land filling.

Which is the legal framework for the management of hazardous waste?

Under the current framework as hazardous waste is considered: a) Any waste which is marked with an asterisk (potential hazardous waste) and is classified as “hazardous” under the provisions of paragraph A (ed.4) of Annex 1 of Article 19 of the JMD 13588/725/2006 (GG B’ 383/2006) and b) any other waste that is classified as hazardous in accordance with the terms and procedure of Article 6 of the JMD 13588/725/2006. JMD 13588/725/2006 regulates further the measures, conditions and restrictions of the management of hazardous waste in compliance with the provisions of Directive 91/689/EEC.

Is marine transportation of waste allowed?

The marine transportation of municipal solid waste is provided in article 42 of Law 3979/2011 (GG A’ 138/2011). An upcoming Presidential Decree issued upon proposal of the Ministers of Interior, Public Administration and Decentralization, Environment, Energy and Climate Change and Water Affairs, Islands and Fishery and Infrastructure, Transport and Communications will establish the management modules, which will allow the transportation of MSW and the terms and conditions of the marine transport as the competent institutions, the licensing process, the development of land and maritime routes and schedules, standards of the required loading spaces at reception sites, the technical specifications for storage and transport, pricing and evacuations within or outside a management module. Deviations related to granting maritime lines are permitted under the special status enjoyed by less favored islands in article 107 paragraphs 3a and 3c of the EU Treaty (former article 87). Restrictions on the principle of proximity are provisionally allowed, if through marine transportation a high level of environmental protection in terms of efficiency and sustainability in the sense of article 191 II (former article 174) of the EU Treaty is succeeded.
What is the importance of spatial and other land plans? How do they affect investments in Greece?

Sustainable development is secured through comprehensive planning policies setting regulations and restrictions on land uses. In this way economic development goals are set along with environmental protection criteria aiming to avoid unregulated development (which may cause environmental degradation or even destruction) while also promoting the comparative advantages of a country, preserving regional characteristics and social cohesion (L.2742/99). Planning in a sustainable manner is a constitutionally protected human right (article 24) and an obligation of the State. For this reason land plans setting these goals are necessary and land uses must be defined prior to the establishment of projects and activities. This process is of interest to regulators and policy makers. What is of interest to investors planning to invest in Greece, is the completion and the fruition of their planned project: if a project is planned without prior detailed land and spatial planning or if permitted contrary to the allowed land uses in the respective area, the project will not be allowed to go forward and the permits entail considerable legal risk at the Conseil d’Etat (CdE – supreme administrative court) following lengthy procedures. Correct land planning is the first step of the design of a project and a significant part of the overall environmental permitting process.

What kind of rules define the allowed land uses in an area?

Definitions of land uses or restrictions of activities may derive from various sources: (a) land plans, applicable on broader areas at national or regional level, which provide the general directions as to the developmental policy of areas and sectors; (b) urban plans, which set specific regulations on areas and define the allowed land uses strictly; (c) special planning tools used for the establishments of certain activities; (d) environmental protection rules and e) sector specific restrictions, which may exclude certain activities from certain types of areas. Environmental restrictions on land uses may relate to the natural, cultural or manmade environment (fragile ecosystems including coastal areas, small islands, creeks, Natura areas and nature reserves following direct land use restrictions by the new Biodiversity law 3937/2011, wetlands, forestry lands, archaeological sites and monuments or traditional settlements). Especially regarding protected areas there are usually regulations which provide detailed directions on the allowed and forbidden land uses (issued in the framework of L.1650/1986 art. 18 et seq). Sector specific restrictions relate to the nature of the planned activity such as rules imposing limitations on the proximity of certain activities from other establishments (the
proximity of mines to residential areas, the proximity of hotels to disturbing activities etc.). Environmental parameters and sector related rules are usually case specific and are examined at the environmental permitting stage of a project. This paper deals with the general land planning rules (land plans, spatial plans and special planning tools).

Are there different levels of land plans?

Land Plans are the first level land plans and drawn at national or regional level. Land Plans may also be drawn to cover special sectors / productive activities. The General Land Plan lists the overall factors affecting the long term development of the country for a 15 year period taking into account international and national policies. This plan sets the basic guidelines for the development axes of the country alongside the protection of its natural and cultural capital. The General Land Plan for the country was issued in 2008 (Government Gazette Issue GG/128/A/03.07.2008).

The Special Land Plans are also drawn at national level aiming at the organization of specific sectors of national importance or specific land categories, such as coastal areas etc. They are drafted for a 5 year period. So far there are Special Land Plans for: a) industry (GG/151/AAP/13.04.2009), b) tourism (GG/1138/B/11.06.2009), c) renewable energy sources (GG/2464/B/03.12.2008), d) fish farms (GG/2505/B/04.11.2011) and e) prisons (GG/1575/B/28.11.2001).

The planning directions of the national plans are applied in the various regions of the Country by means of Regional Plans. Such plans are drawn in principle for a 5 year period and they aim to address the spatial organization of the basic networks as well as the economic restructuring of each region setting the rules for the planning of basic productive activities. If necessary they may be further specialized at local level. Regional Plans indicate the broader areas in which special planning tools may be established in order to allow for the realization of a project or an activity. All other plans (spatial and urban plans, special planning tools etc.) must be compatible with the directions of Regional Plans.

Regional Plans were issued for all regions of Greece in the years 2003–2004 and are currently being revised. The fact that the Regional Plans are outdated may create obstacles for the realization of new investments today and there is an ongoing attempt to resolve this matter (below).

How are land uses specified at plot level?

Second level plans, i.e. spatial plans provided for in L.2508/1997 called “General Urban Plans” (or ‘SHOOAPs’ in the case of smaller settlements up to 2.000 residents), and “Urban Studies” (“poleodomiki meleti” and “praxi efarmogis”) that accompany them provide specific land uses for each urban block. The owner of a plot may only construct buildings allowed by the specific land uses for each urban block. For example, in a “pure residence” area one may not develop shopping centers or industries (among others, CdE1881/2010). No building permits may be issued for land uses other than the allowed ones (art. 4, L.2508/1998, for example decision CdE2900/2003 which cancelled a hotel building permit in a “pure residence” area). These plans also regulate building coefficients (built square meters, proportion of plot coverage by the building, height etc.) common
areas, common use buildings, general infrastructure and they may even provide rules on the materials and styles of buildings. For the broader areas, i.e. beyond the boundaries of settlements, second level land plans provide categories of land uses in a more general way.

What are the types of land uses deriving from urban and spatial plans?

Land uses in Greece are classified according to their general urban plan purpose as: i) pure residence, ii) general residence, iii) urban and local centers, iv) low or medium disturbance industries or crafts and industrial parks, v) high disturbance industries or crafts, vi) wholesale facilities, vii) tourism & recreation, viii) open space free and urban green areas and ix) common use facilities (articles 230–240, Code of Basic Planning Laws).

Land uses are further specified according to their special urban plan purpose comprising the content of each land use category. Usually first level land plans define the broader category, whereas second level land plans decide on the specific content of each land use. For example, ‘tourism & recreation’ is the broader category which contains various specific uses such as hotels, residences, commercial shops, restaurants, sport facilities, conference centers, helicopter pads, casinos, golf courses, marinas etc. A land plan together with a spatial plan may define the land use for an area including or excluding certain of the uses mentioned above.

What happens in case of areas beyond the boundaries of settlements (cities or towns)?

For these areas there is a general rule setting building coefficients known as ‘the 4 stremma rule’ which allows buildings to be built on a plot of minimum surface of 4,000 sm. In many cases special rules create deviations from or restrictions on the 4 stremma rule, such as in the case of Zones of Residential Control (ZOE) or other Regulations which are imposed in an attempt to control unregulated building activities. For example, many of the Cyclades islands have such kinds of rules.

Does the 4 stremma rule create planning directions? Recent legal and spatial developments, along with the interpretation of planning rules by the CdE, lead to a gradual reduction if not prohibition of the establishment of projects in areas beyond the boundaries of settlements, which are areas mainly rural and must retain this rural character. Although there is no clear distinction yet as to when one can plan on the basis of the ‘4 stremma rule’ alone or by using a special planning tool (for example in case of a hotel), the case law of the CdE shows that the safest way is to permit a project either in specific receptor areas (through special planning tools) or in areas where second level land plans are in place. This is especially the case if a project entails great interventions in an otherwise mainly rural area (among others, CdE3920/2010) or in the case of industries or handicrafts.

How can special planning tools be of use to investors?

Special planning tools establish ‘organized receptors’ in which productive activities can be land planned and permitted. Planning in organized receptors is preferred because it entails less planning risk and simpler permitting process (L.4014/2011). The most common are: ‘areas for productive activities’ (known as POAPD areas, art. 24, L.1650/1986); organized receptors for handicraft, industry and other business activities.
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(Business Parks, art. 41 et seq., law 3982/2011); integrated tourism resort areas (POTA, art. 29, L.2545/1995 as amended) and private urbanization schemes (PERPO, art. 24, L.2508/1998, Land Cooperatives, articles 124-138, Code of Basic Planning Laws). Special laws may provide for ‘special integrated development plans’ which allow the definition of land uses in specific plots for specific purposes. Such plans were used in the past for the Olympic Games (L.2730/1999) and are now to be used for state owned private lands (L.3986/2011, below). Similar plans may be issued in case of strategic investments (L.3894/2010, which however are bound by the choices of regional plans (below). All such tools define their own building coefficients, even amending local urban and spatial plans, if land planned within towns or cities.

There are also other special planning tools which may also regulate land uses and provide specific planning and building rules, such as Areas of Special Spatial Interventions and Plans for Integrated Urban Interventions, (PEHP and SOAP respectively, art. 11 and 12 L.2742/1999), plans for Urban Restructuring, Zones of Special Support, Active Planning Zones (L.2508/1998), not examined herein because they are usually of no interest to investors.

POAPD Areas

A POAPD area may be used for the establishment of any productive and business activity of the primary, secondary or tertiary sector. Standard case law of the CdE rules that in case of absence of integrated and complete land plans (at all levels) the permitting of fishfarms (among others CdE893/2004, 2489/2006, 2683/2007, 1673/2010), industries and handicrafts (CdE2669/2007, 3175/2009) even hotels under certain circumstances (CdE1163/2002) may only be permitted within POAPD areas. In all these cases the environmental permitting of the project was annulled for planning grounds.

Business Parks

Industrial or handicraft activities of higher or lower impact and disturbance, professional workshops, logistics and storage establishments, business activities of the secondary and tertiary sector with the exception of shopping centers, applied industrial, energy, metallurgical or high tech research laboratories, electricity plants must be land planned in organized receptors recently regulated as ‘Business Parks’. Prior to L. 3982/2011 these receptors were known as industrial areas/parks, biotechnical parks and industrial & business areas. All these remain at force, if established and are now called along with Business Parks ‘organized receptors for handicraft and business activities’.

POTA Areas

A POTA is an area for integrated tourism development. Such areas are receptors for complex and integrated tourism resorts (hotels with summer homes for sale or long lease and special tourism facilities such as golf courses, spa, conference centers etc.). Planning integrated resorts in POTA areas is now compulsory in case of plots over 800.000 s.m. (art. 9, L.4002/2011). A POTA theoretically is an area in which more than one hotel may be land planned, yet in practice so far the only existing POTA relates to one project owner.
Private Urbanization Schemes

A PERPO is a private urbanization scheme for areas over 50,000 s.m. Land cooperatives cover the residential needs of their members for main residence or second homes and must now be planned within PERPO areas. The CdE has previously taken the view that new settlements are to be created in the absence of existing, which could absorb the settlement pressures for first or second homes (CdE/PE 273/1998).

Can an investor initiate the establishment of such planning tools? What is the process?

If there are no such receptors in place ready to include new investments, then they may be defined on the initiative of a potential investor, subject to an existing related first level planning direction. In other words a higher land plan (Regional Plan and in its absence the national and/or the special land plan) must provide specifically for such receptors in a specific area, as they may not be established contrary to or in absence of such planning directions.

A Strategic Environmental Assessment (SEA Directive 2001/42/EC) must be drafted and approved prior to the establishment of such planning tools.

And what if a plan is outdated or obsolete?

Planning directions are valid until replaced. This is a problem because Regional Plan directions must be followed and all Regional Plans are now outdated and under revision. There are several parallel attempts to resolve this problem. The new tourism law (L.4002/2011) provides for the direct application of the Special Plan for Tourism for the planning of tourism resorts rather than the specific Regional Plans. In the case of ‘state private properties’ a special plan may define land uses even contrary to outdated plans, which are plans for which more than 5 years have passed since the date they were issued. A respective provision for strategic investments is now energing (below).

Are there special provisions for strategic investments?

Strategic Investments (L.3894/2010) are land planned on the basis of the common planning rules following the guidelines of the Regional Plans. An amendment is currently being discussed so as to allow planning on the basis of general or special land plans’ directions, which will deal with the problem of outdated regional plans. Special Plans issued in case of strategic investments (art. 24 L.3894/2010) may be used for both the siting and planning of strategic investments as well as the approval of environmental terms. These plans may also introduce deviations from building regulations imposed by existing second level plans, if this is necessary to facilitate the realization strategic investments in Greece.

Are there special provisions for state owned private lands to be exploited in the light of recent developments?

‘State private properties’, i.e. private properties of the State subject to development by the Hellenic Republic Asset Development Fund, may be developed according to the rules set out by the overall national development and planning policies (L.3986/2011). The allowed land uses for such properties are: a) tourism & recreation, b) business parks, c) thematic parks, shopping centers & recreation, d) transport, technical, social &
environmental infrastructure and e) mixed uses. A ‘Special Plan of Spatial Development of Public Properties’ may define detailed land uses on an *ad hoc* basis and set special terms and building restrictions. Such plans deal with the direct planning of activities and are issued following, *inter alia*, a Strategic Environmental Assessment. A specific Decision approves the final planning of the activity, the special categories of projects and activities to be built, the master plan of the investment (in scale of 1:5,000) and the environmental terms of the project, in an effort to enhance investment stability. Such Special Plans may amend existing land or urban planning rules, if such an amendment is necessary for the integrated and efficient development of the properties, especially in case of outdated plans.

**To sum up:**

Planning is a very important factor for the realization of investments in Greece. Recently there have been important legislative changes dealing with major planning issues in an effort to facilitate investments in Greece. The issuance of complete planning rules, the ability to plan using special planning tools or special plans that can deal with outdated plans and can directly site a project along with the ability to amend urban plan provisions obstructing the realization of strategic investments are expected to create a more investor-friendly and more secure planning environment in Greece.
What specific provisions apply in relation to environmental liability, within the meaning of Directive 2004/35?

Directive 2004/35/EC, as amended by Directive 2006/21/EC on environmental liability with regard to the prevention and remedying of environmental damage, was implemented by Presidential Decree (P.D.) 148/2009. The operator of an activity within the scope of P.D. 148/2009 bears the costs for the preventive and remedial actions taken pursuant to the law for the prevention and restoration of environmental damage caused by his operations.

Environmental liability depends on the type of activities undertaken by the operator, as described in Annex III of P.D. 148/2009, and do not require any fault or negligence. However, in order for these regulations to apply, the law requires that the operator has been identified by the competent authorities, the damage has been specified and that a causal link exists between the operator, the activity and the occurred or threatened environmental damage.

As a general rule, operators are obliged to apply the law with regard to the prevention and the remedy of any environmental damage or threat and to cover all related costs when they are liable for such damage. In addition, they are obliged to disclose to the competent authority any environmental damage and cooperate for the determination and application of the remedy measures.

In the event that there is an imminent threat of environmental damage, the operator is obliged to undertake instantly any preventive measures and to inform the competent authorities immediately. The authorities may reform the measures undertaken, provide further instructions or ask for more information.

Following the occurrence of the environmental damage the operator must inform the competent authorities, undertake the necessary measures to avoid further pollution, submit to the competent authorities any remedy proposals and undertake his own risk assessments. The competent authorities define in cooperation with the operator the necessary measures to be undertaken.

The operator is burdened with all costs and expenses for the remedy and prevention of environmental damages. The competent authority may recover remedy costs from the operator liable for causing the damage or threat directly, or via insurance coverage or other types of financial guarantees.

Is strict environmental liability limited to operations described in Annex III?

Apart from strict environmental liability of operators of activities described in Annex III, P.D. 148/2009 provides for strict environmental liability (without fault or negligence) for all operators of activities that cause damage to protected species and habitats, that
include, apart from the species and habitats described in the Annexes of Directives 79/409 and 92/43, as amended, and every habitat or species that is not specified in such Annexes, but is determined according to national law by a regulatory act for equivalent purposes to those provided in the above Directives. To such extent, P.D. 148/2009 provides a stricter provision than the Directive 2004/35.

Can an operator, within the meaning of Directive 2004/35, be insured against environmental liability?

In relation to insurance, despite the fact that under P.D. 148/2009 insurance is obligatory from 01 May 2010, such provision is linked to the issue of Ministerial Decisions that set the necessary details in relation to particular activities or categories of activities. Such Decisions have not been published yet. Nevertheless, there is a provision on cover of environmental risks in Insurance Legislation. Under article 23 of the Insurance Act (Law 2496/1997) provides that in the absence of a contrary agreement between the parties, an insurance policy for environmental risks will cover the expenses for remedy of the natural environment, which might also include cost for removal of waste and debris. Insurance money is paid only for cost actually paid if the damaged was caused by a sudden and unexpected event. Therefore, if the parties wish to cover third party injury and damage to assets, this should be specifically mentioned in the policy. To that extent, there are insurance products offered by the local insurance market that, however, do not cover unlimited liability as provided by P.D. 148/2009, but range from 100.000 - 10.000.000€.

Can an operator be liable for environmental damage if the emission or activity could not have reasonably been foreseen that it could cause environmental damage according to the level of the scientific and technical knowledge at the time of its occurrence?

If the above can be proved by the operator, he is exempted from liability.

What other types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

There are criminal, civil and administrative liabilities and these can be both personal and corporate. They are mainly provided in articles 28, 29 and 30 of Law 1650/1986, as amended, but criminal prosecution is also foreseen in other special laws such as Law 743/1977 for the protection of the marine environment and Law 998/1979 for the protection of forests. Numerous regulatory acts relevant to environmental protection and conservation refer to articles 28-30 of Law 1650/1986 in relation to sanctions for breach of the relevant provisions.

In the case of criminal prosecution, defences that could be raised are that there was no fraudulent intent or negligence and (in the case of unlawful pollution caused by the operator) that the environment was not degraded by the unlawful activity. In civil suits, possible defences are that damage arose out of an act of God or from an action of a third party acting with fraudulent intent. Administrative liability is strict and the only defence is that the breach did not actually take place or (in case of unlawful pollution) that there is no causal link between the operator’s activities and the pollution caused by the operator.
Apart from the above, the general provisions on tort also apply. Article 914 of the Civil Code is the basic provision for liability in tort. It requires breach of law, intention or negligence, damage and causal link between the action and the damage. Damages can also be awarded for breach of the right to personality under article 57 of the Civil Code provoked by illegal operations leading to degradation of the environment. Criminal environmental law is currently in the process of revision in order to comply with the provisions of Directive 2008/99. The foreseen revision of article 28 of Law 1650/1986, of the Criminal Code and other relevant Criminal Law establishes as new crimes a list of serious breaches of EU Environmental Law provisions, in accordance with the Directive.

Can directors and officers of corporations attract personal liabilities for environmental wrongdoing?

In the case that fraudulent intent or diligence can be proved, the following persons have concurrent criminal liability together with the actual wrongdoers: the President of the board; directors of sociétés anonymes; managers of limited companies; the Counsel of a cooperative; and all persons who act as governors. If found guilty of fraudulent intent they face imprisonment of three months to two years and a fine. If negligence is proved then only imprisonment of up to one year can be enforced. Prison sentences can be converted into fines ranging from 4.40 to 59€ per day of imprisonment. In addition to criminal behaviour being established, the violation of the permit must lead to a “degradation” of the environment, the onus of proof of which rests with the prosecution. Civil liability for damages for private persons (that could include the above-mentioned directors) is also foreseen in the case of pollution and/or degradation of the environment. Furthermore, administrative measures can be enforced: depending on the seriousness of the violation, administrative fines fall within the range of 50 to 2.000.000€.

Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Liability within permit limits is only recognised in relation to environmental liability, within the meaning of Directive 2004/35. Under P.D. 148/2009 it is provided that compliance with the terms and conditions defined in an environmental permit does not exempt an operator from liability for the cost of preventive and remedial measures provided, an operator can prove that the environmental damage or an imminent threat thereof resulted either from an act of a third party and took place despite all adequate measures being in place, or was an act in compliance with a compulsory order or instruction by a public authority. However, if the specific activity that caused the damage is explicitly foreseen in such permit, and the terms of the permit are strictly observed, then he is also exempted from liability.

Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

It is not possible for a shareholder to be held liable for breaches of environmental law and/or pollution caused by the company. The parent company can be held liable if it can be proven that it performs “commanding influence” on the affiliate. Commanding influence exists when the parent company owns directly or indirectly, e.g. through third parties that act on behalf of the company,
at least 20% of the capital or voting rights of the affiliate and, simultaneously, exercises a dominating influence on the government and/or the operation of the latter. If the parent company is registered outside Greece it would essentially depend on the law governing the parent company’s country as to whether it could be sued in its national courts. Equally, if the parent company is registered in Greece and the affiliate in a foreign country, it is the latter’s country law, in accordance with the parent/affiliate relationship, that would govern the possibility of the foreign claimants applying in the Greek courts.

What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

Implications from an environmental liability perspective are no different to general liability covering such transactions. In the case of sociétés anonymes and/or limited companies, a share sale follows the law covering sale, and relevant liabilities are essentially limited to the contracting parties, whereas in relation to third parties’ liability (including administrative liability), it is the company (as a legal person) and the board that are liable. In asset purchase transactions, liability (including administrative liability) extends to the purchaser to the amount covered by the value of the assets. Liability continues to lie with the seller. The asset purchased should represent the totality or an important part of the enterprise.
Which is the basic legal framework for the protection of cultural heritage?¹

In order for the legal framework regulating the protection of cultural heritage to be more easily perceived, it is, initially, essential to state that, due to the particularity of her historical background, Greece’s cultural heritage is of great importance. Perhaps, it wouldn’t be an exaggeration to claim that Greece constitutes, almost entirely, an extensive and complex archaeological site. Indeed, both in the hinterland and most of the islands, there are many important archaeological sites with monuments relating to the era of ancient Greece, and, subsequently, the Roman times. Many of these monuments are protected via their inclusion in archaeological sites, while for others, perhaps most of them, the archaeological excavations have not progressed yet.

For the reason mentioned above, the legal framework for the protection of cultural heritage is particularly rigorous. The most important provisions in this form are, certainly, those contained in the article 24 paragraph 6 of the Constitution, whereby: «Monuments and historic areas and elements shall be under the protection of the State». This provision is specified by the law 3028/2002 which currently constitutes the backbone of the relevant legislation. Moreover, it is worth noting that the existing legal framework is supplemented by the international conventions relating to specific aspects of the protection of cultural heritage and ratified by Greece. Indicatively, we refer to the definitions of the International Convention of Granada in 1985 for the protection of architectural heritage in Europe, signed in the framework of the Council of Europe and, subsequently, ratified by the Greek Parliament with the law 2039/1992², the (revised) European Convention of Valletta of the 16th of January in 1992 on the Protection of the Archaeological Heritage, which was also signed within the framework of the Council of Europe and was, later, ratified by the Greek Parliament (law 3378/2005), the Convention of Paris of the 6th of May in 1969 on the protection of the archaeological heritage, also concluded in the framework of the Council of Europe and ratified with the law 1127/1981 as well as the International Convention of Paris of the 23rd of November in 1972 on the protection of the international cultural and natural heritage ratified with the law 1126/1981. It is noted that the above rules of the international law are of existing legal binding force, applying, therefore, in the national

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legal system on a superior-effect basis, compared to the common law, provided, of course, that they include provisions characterized as self-executing.

**Which specific elements of the cultural heritage are currently protected?**

According to the law 3028/2002 and in the protection context structured with it, the cultural heritage of the Country is included since the ancient times and up to the present day. This protection aims at preserving the historical memory for the sake of present and future generations as well as the upgrading of the cultural environment. The cultural heritage of the country consists of cultural assets within the boundaries of the Greek territory, including the territorial sea, as well as in other sea areas where Greece exercises such jurisdiction under the international law. The cultural heritage also includes intangible cultural assets.

It is noted that, specifically the notion of «immovable monuments» includes a) ancient monuments dating back to 1830, b) more recent cultural goods that are earlier than the last hundred years, being, subsequently, characterized as monuments due to their architectural, urban, social, racial, traditional, technical, industrial or generally historical, artistic or scientific significance, γ) more recent cultural goods falling within the period of the last hundred years, being, subsequently, characterized as monuments due to their architectural, urban, social, racial, traditional, technical, industrial or generally historical, artistic or scientific significance.

**How can we practically implement the provisions for the protection of the cultural heritage?**

It constitutes an incontrovertible fact that the jurisprudence of the Council of State, namely the supreme administrative Court of the country, plays a particularly important role in the implementation of the provisions for the protection of cultural heritage. As with the protection of the natural environment, the Court has developed a particularly strict jurisprudence establishing a regime of practically complete protection of cultural heritage.

In particular, according to its case-law, the aforementioned constitutional provisions «specifically introduce enhanced protection of the cultural environment, i.e. the monuments as well as other cultural goods originating from human activity and composing, due to their historical, artistic or scientific importance, the general cultural heritage of the Country. This protection includes, inter alia, the maintenance of these cultural elements in perpetuity. Therefore, any intervention near the monument shall, in principle, aim at protecting it and demonstrating its importance; it shall be attempted in view of the specific characteristics and nature of the monument and on the basis of scientific data, prohibited interventions and actions incompatible with the intended use of the monument. (CoS 2540/2005)» (see indicatively CoS 2332/2009). In this framework,

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3. See Apostolos Papaconstantinou, State and International Law. The constitutional arrangement of national and international law relations, Athens, 2001

«the Administration is due to take any necessary measure, apt for the protection and promotion of the importance of monuments» (CoS Plenary 88/2011). «This protection includes, inter alia, the maintenance in an invariant way and in perpetuity of these cultural elements as well as of the space needed for their emergence as an historical, aesthetic and functional module. This protection is of both preventive and repressive nature; in the latter case it includes the obligation to cease the infection of the cultural monument and restore its protected character» (CoS 293/2010). Indeed, «this protection includes, inter alia, the maintenance of these cultural elements in perpetuity and entails the ability to impose the necessary measures and restrictions of property rights as well as the obligation for owners and possessors to restore them to their original form, when damaged by time or other human actions or other incidents. These restrictions, imposed by the article 24 of the Constitution, may have a broader content compared to the general restrictions on the property included in the article 17 of the Constitution» (CoS 1587/2010, 2338/2009, 1652/2009, 3050/2004, 1097/1987 Plenary etc).

Additionally, according to the Court's judgment «the rule of validity of interventions near the monument applies only after obtaining the approval of the Minister of Culture; the relevant approval of the Minister of Culture for the building work shall be, specifically, granted if the distance from the immovable monument –in the sense of which its immediate surroundings are currently included in an explicit way- or the legal terms framing it, do prevent any danger of a direct or indirect damage to it. Subsequently, it is concluded that, the Minister of Culture evaluates the characteristics of the project and assesses the direct and indirect impact of the implementation of the project on the immovable monuments, i.e. those falling within the scope of protection of the archaeological law, in order to grant the permit to implement the project near monuments. In view of the above constitutional requirement as well as the provisions of the law 3028/2002, interpreted under the light of the above constitutional provisions on the protection of ancient monuments in perpetuity, the Minister of Culture, in the event that the implementation of the project and, specifically, the construction of a building have adverse effects on the protected monument, is obliged, with regard of the effective protection of the monument, to impose the appropriate conditions and building restrictions which, in the context of his reasoned judgment, will dissolve any harmful consequences to the monument (see CoS 2079/2003, 3258/2000, 2725/1997, 1853/1977)» (CoS 2332/2009).

In that regard, the Court has judged that «within the meaning of the provisions of the archaeological law, any intervention on the monument or near the monument shall be, in principle, designated to protect it and demonstrate its importance; subsequently, it shall be attempted in view of the specific characteristics and nature of the protected findings and on the basis of the data of the archaeological science, the prohibited interventions and actions incompatible with the intended use of the ancient monument (CoS Plenary 3454/2004, 3279/2003, 3824/2007, 2057/2007). Furthermore, the acts of the competent organs of the Administration, authorizing the execution of works or activities on or near the ancient monument, shall be specifically reasoned regarding the relevant judgment that these works or activities do protect, underline the importance or, in any case, do not substantially damage the monument or the surrounding areas. Conclusively, within the meaning of all the above provisions restrictively interpreted in the light of the article 24 of the Constitution, any activities that do not, due to their very nature or the innate dangers
resulting from their attempt, aim at protecting the monuments and the surrounding areas and demonstrating their importance, causing, furthermore, harm of them, are not developable within the limits of the characterized archaeological site» (CoS 293/2010).

All the above tend to render clear that the regulated protection context for the cultural environment, according to the case-law of the Council of State, is of an especially high standard. Subsequently, a strict legal framework is gradually structured which acknowledges the priority of cultural heritage and justifies drastic restrictions on ownership.

What is the effect of the implementation of the provisions for the protection of cultural heritage on the development of investment projects and in what way are the relevant legal issues dealt with?

The protection of cultural heritage often constitutes an obstacle in the development of investments. Instead of appearing as a factor attracting investment activities relating to the management of cultural heritage, it, not rarely, leads to delays or even cancellation of investments. This is mainly attributed to the inability of the Public Administration (especially the archaeological services) to respond within a reasonable time to the demands of owners and cooperate with them in order to achieve both the protection of monuments and the proper management of property. The legislative framework is also often highly complex, leading to different interpretations among all competent Services.

Furthermore, the Administration denotes, with great ease, extensive areas as archaeological sites, imposing at the same time on them an absolute prohibition for any use or imposing at least limited uses. Hence, it results in the legal binding of large areas without examining if there are actually documented findings as regards the existence or absence of antiquities in these areas. In addition, in many cases the legal binding of the areas is manifestly disproportionate in relation to the pursued aim of protecting these specific monuments.

The interested investors tend to deal with this issue on the grounds of conducting the appropriate Studies which substantiate in a scientific way the protection of cultural property, provided of course that this constitutes an option. The recent tendency is to render the functioning of the archaeological services more flexible in order to shorten the relevant procedures for licensing of establishments. The regulations of the law 4014/2011 modifying the procedures for environmental licensing of projects and activities in order to achieve simplification and acceleration of them constitute a characteristic example of the above.

Any legal obstacles, regarding the development of investment projects, caused by the strict application of the provisions relating to the protection of cultural heritage can be dealt with legal means (via the administrative or, if necessary, the judicial procedure), both preventive and punitive. More specifically, it is essential that, during the preparation of investment projects, any existing restrictions on the protection of cultural heritage are taken into account. It is, therefore, necessary to establish an examining process of the legal framework governing this area, as well as of the conditions laid down in the use of land in order to verify the compatibility of the investment project with them. Note that the
change of land use and the lifting of restrictions which were imposed for the protection of cultural heritage is, in view of the strict case-law of the Council of State, extremely difficult. However, in most cases the provision of special conditions in the Environmental Impact Study relating to the protection of cultural property may have a positive effect, when dealing with possible risks for the investment. It is, subsequently, an incontestable fact that the adequate technical and legal documentation of these studies is an essential condition for the successful judicial troubleshooting, if needed.
Which public bodies participate in licensing and controlling of activities emitting radiation and electromagnetic effects?

Apart from the Ministries that are generally responsible for the protection of the environment (Ministry for Environment, Energy and Climate Change) and of the human health (Ministry for Health and Social Solidarity), for research and technology (Ministry of Education, Lifelong learning and Religious Affairs) and for industry issues (Ministry for Development, Competitiveness and Shipping), the following institutions exercise specific competencies in respect to protection against dangers arising from radiation and of electromagnetic effects:

- The Greek Atomic Energy Commission (GAEC) which is a decentralized public service, supervised by the General Secretariat for Research and Technology (GSRT-Ministry of Education, Lifelong Learning and Religious Affairs). GAEC is the national authority responsible for the protection of the general public, of workers and of the environment from ionizing and artificially produced non-ionizing radiation and as well as for nuclear safety and security. The Commission has mostly advisory and some decision making competencies regarding the issuance of licenses and permits in the aforementioned sectors. Furthermore, GAEC is also responsible for monitoring the related activities and for controlling compliance with the restrictions that apply. (www.eeae.gr)

- The National Centre of Scientific Research “DEMOKRITOS” (NCSR “D”) which is a self-administered governmental legal entity, supervised also by the GSRT. NCSR “D” operates as a multi-branch scientific research centre. Its internal organization comprises the following administratively independent Institutes: Institute of Nuclear Physics, Institute of Nuclear Technology and Radiation Protection, Institute of Materials Science, Institute of Telecommunications and Informatics, Institute of Microelectronics, Institute of Physics/Chemistry, Institute of Biology and Institute of Radioisotopes and Radio-diagnostic Products. The Institute of Nuclear Technology and Radiation Protection (INT-RP) operates an integrated radiation protection centre in Greece, possesses expertise and facilities for radioactive waste treatment and maintains an integrated laboratory of Environmental Radioactivity Monitoring in Greece, with an extensive network of sampling, measuring and monitoring stations throughout the country’s territory. (www.demokritos.gr)

- The Hellenic Telecommunications and Post Commission (EETT) which is the national independent regulatory authority for telecommunications and postal
What legislation applies with regard to nuclear installations and waste?
Legislative Decree (LD) 854/1971 (OJ A’ 54) on “Terms regarding the establishment and operation of Nuclear Installations” defines the general legal framework as regards all installations aiming at nuclear electricity generation at use, construction, processing and deposition of nuclear fuels and of big quantities of other radioactive products; and at storage, procession and disposal of radioactive waste.

What licenses are required for the installation, construction, modification, operation and transfer of nuclear installations?
According to Article 2 of LD 854/1971 a special license is required for the aforementioned activities. The categories of special licenses are the following: (a) License for the establishment of the installation on a specific site or for changing site; (b) Installation or modification License; (c) License for operational testing; (d) Operation License; (e) License for transfer of rights. All these licenses are granted by decision of the former Minister for Industry (currently Minister for Development, Competitiveness and Shipping) following an opinion by GAEC, and shall include also the safety measures that have to be observed with regard to each activity. The LD grants legislative authorizations for the issuance of Ministerial Decisions on issues related to the procedure and the terms and conditions of such licenses; however, such decisions have not been issued yet. With regard to nuclear materials, armament and technologies affecting National Defense and Security, according to the provisions of MD 5408/E3/2362/1993 a special permit is required. This permit is granted by decision of the Minister for Economy upon positive opinion issued by GAEC and by GSRT, by the competent Division of the Ministry for Foreign Affairs and by the Ministry for Defense.

What licenses are required for transfer of nuclear waste and spent fuels?
According to the provisions of PD 83/2010, GAEC is the competent authority for granting licenses and permits related to Shipments of Radioactive Waste and spent fuel and also for controlling the use of such licenses.

What legislation applies for the protection against dangers arising from exposure to ionizing radiation?
LD 181/1974 (OJ A’ 347), as subsequently amended and in force, provides the general regulatory framework regarding the adoption of measures aiming at the protection of the population and of public goods against dangers arising from ionizing radiation that
is emitted from any kind of equipment, nuclear installations and radioactive materials, with the exemption of military installations or weapons. MD 9087(FOR) 1004/1996 (OJ B’ 849/1996) regulates technical and specific issues related to the protection of outdoor workers that are exposed to dangers from ionizing radiation during their activities within a controlled area. The “Radiological Safety Regulations” that were issued by MD 1014(FOR) 94 (OJ B’ 216/2001), as subsequently amended and complemented, include specific technical and detailed rules on protection from ionizing radiation.

What permits are required for import, installation and use of equipment emitting ionizing radiation?

According to Article 4 of the LD 181/1974 as in force, condition for the import, installation and use of any equipment emitting ionizing radiation is to hold a previous special operation permit. Special operation permits are granted on the basis of a certificate issued by the GAEC regarding the adequacy of the installations, of the equipment and of the operating conditions of the laboratories with respect to radiological safety. More specifically:

- Regarding medical equipment and the installation and operation of radioisotope laboratories, the special operation permit is granted by decision of the decentralized administration (Regional Council), upon binding opinion issued by the “Special Committee for Ionizing and Non Ionizing Radiation”. Permits are granted to medical practitioners that hold an administrative license to exercise the medical profession and also have a related medical specialty. Condition for the issuance of such permit is to hold a license for convenience and necessity, which is granted following the same procedure. The decision for the issuance of such license shall contain specific justification in respect to the following criteria: (1) Service of the public interest; (2) adequacy of the place proposed for the installation of the equipment; (3) population density and possibility to encumber the health of the residents from unnecessary dispersion of sources and equipment emitting ionizing radiation; (4) development of new techniques and necessity to update existing laboratories.

- Regarding import, installation and operation or use of equipment emitting ionizing radiation for non medical purposes as well as in the case of installation and operation of radioisotopes for non medical applications, the special operation permit is granted by ministerial decision, following a binding opinion issued by the NCSR “D” (Ministerial Decision 2146 (FOR) 185 (Research) dated 8/22.5.85 (OJ B’ 306).

- Import, production, possession or distribution of radioactive substances as well as of radioactive sources of any kind, including fission materials, necessitates a special operation permit that is granted by GAEC decision.

The administrative bodies responsible for the issuance of the aforementioned special operation permits and licenses are respectively responsible for supervising, controlling
and monitoring the use of such permits and licenses. Furthermore, they are responsible for the revocation of the permits and licenses in specific cases enumerated in the law.

**What legislation regulates prospecting, research and mining of fossils that include exploitable radioactive elements?**

The right of prospecting, research and mining of fossils including exploitable radioactive elements belongs to the State and is regulated by the Mining Code (LD 210/1973) and the Regulation of Mining and Extraction Works (MD Ι-5η/F/17402/12-12-1984, OJ B’ 931/1984, as amended and in force). By ministerial decision, following a binding opinion issued by GAEC, any eventually necessary specific regulations and rules on radiological safety may be adopted.

According to the rules of the Mining Code, the State may exercise the right of prospecting, research and mining of fossils either directly or conclude a lease contract with private entities following a tendering procedure that is run by the Minister for Economy. A non-competitive procedure may apply aiming at the protection of public interests, in case of necessity to accelerate research and exploitation. In such case a preliminary opinion issued by the Mining Council is required and furthermore, the conclusion of the lease contract necessitates prior approval by the Ministerial Council. Any person that becomes aware of the presence of radioactive elements in any region of the country entails the obligation to inform immediately the Government and GAEC.

**What legislation applies for the protection against dangers arising from exposure to non-ionizing radiation?**

Based on the Council Recommendation of 12 July 1999 (EE L 199) on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) and on the Guidelines that were issued by the International Commission on Non Ionizing Radiation Protection (ICNIRP) in 1998, the following MDs set the basic restrictions and reference levels as regards safe exposure to non-ionizing radiation: (a) MD 53571/3839 (OJ B’ 1105/6-9-2000) provides for “Protection measures as regards the exposure of the general public to all land based antenna stations” and (b) MD 3060(FOR)238 (OJ B’ 512/2002) includes provisions as regards “Protection measures for the exposure of the general public to all low frequency electric and magnetic fields emitting devices”.

**What permits and licenses are required for antenna construction?**

Condition for the installation of antennas is to hold a previous antenna construction permit. According to Article 12(lb) of Law 3431/2006 (OJ A’ 13) on “Electronic communications and other provisions”, EETT is generally responsible for granting antenna construction permits. From the scope of EETT responsibility are excluded antennas constructed by the armed forces, the security forces, the port police, the Ministries, the diplomatic missions, the amateur radio operators or the Civil Aviation Authority, as well as the construction of antennas for use in one building (such as wi-fi) or within a limited area (e.g. an industrial area) or antennas for reception of broadcasting for the general public (see Article 1 paragraph 2 Law 2081/2000 as in force). All issues related to antennas that are excluded from EETT scope of responsibility are regulated by
MD issued by the Minister for Environment, Energy and Climate Change and the Minister for Infrastructure, Transport and Networks upon proposal by EETT (Article 31 paragraph 8 Law 3431/2006).

Apart from the antenna construction permit, condition for the installation and operation of antennas are: (a) The approval of environmental terms that is issued by the competent authority (Regional Council) following binding opinion by GAEC as regards compliance with the restrictions on safe public exposure to electromagnetic fields; (b) an approval granted by the competent city planning authority for the installation of the antenna and of the related constructions; (c) a binding opinion issued by the Civil Aviation Authority on issues related to aviation safety.

MD 11926/261 (OJ Β΄ 453/22.03.2011) sets the specific procedure for licensing of installations of standardized antenna constructions.

What legislation applies regarding the procedure for granting antenna construction permits by EETT?

The procedure for the issuance, modification and revocation of antenna construction permits that are issued by EETT as well as the related terms and conditions are regulated by the “Regulation on Antenna Construction Permits on land” that was issued by EETT decision in 2006 (OJ Β’ 1666/2006) and was subsequently amended in 2009 (OJ Β’ 517/20-3-2009).

What legislation applies as regards the procedure for environmental licenses for antennas?

Environmental licensing as regards the installation of antennas on land is regulated by the provisions of the MD EYPE/126884 (OJ Β’ 435/29-3-2007).

Who is responsible for controlling compliance to the restrictions concerning safe exposure to electromagnetic radiation?

According to Article 31 of Law 3431/2006, GAEC is responsible for metering and controlling compliance with the restrictions regarding safe public exposure to electromagnetic radiation from antennas. GAEC operates controls and metering either at own initiative and by way of random check regarding the antennas that are installed within the boundaries of a city plan; or upon a related application that may be submitted by any person holding a legitimate interest or by EETT. In the case of an application submitted by third parties, GAEC is obliged to issue a report within a time period not exceeding 20 days.

What permits and licenses are required for antenna construction in forest and for antenna parks?

Condition for the installation of structural or mechanical constructions used as a basis for antennas, transmitters, transponders or related equipment in forests, forest areas and areas under reforestation or in the core of national parks, is to hold (a) an antenna construction permit and (b) a license issued by the competent local authorities (Regional Council). In any case, any eventual danger of forest fire has to be excluded.
Antenna parks, i.e. areas in which antenna systems are installed aiming mainly at the provision of radio or television services, may operate only upon decision by the Minister for Infrastructure, Transport and Networks. The Minister for Infrastructure, Transport and Networks and the Minister for Environment, Energy and Climate Change have the responsibility to decide on spatial planning of antenna parks.
The basic legal framework governing real rights in immovable property

The right to property, as a fundamental right, is under the protection of the State, as provided in the Greek Constitution, Article 17, whereas it is stipulated that property rights cannot be exercised against the public interest.

Within this context, the Constitution imposes a restriction or deprivation of property (expropriation) for the sake of public interest, always under the prerequisite of a prior compensation of the owner.

Furthermore, the most significant source of property law lies in the third book of the Civil Code (articles 947-1345). Other provisions and property law rules exist in other books of the Civil Code, and the Code of Civil Procedure, as well as in various special laws.

The rights in real estate

Real property rights, i.e. rights which provide to the beneficiary direct and absolute power, are the ownership (article of C.C 999), the servitudes (articles of C.C 1118) and the mortgage (article of C.C 1257). Furthermore, the following distinctions are also met:

- the full ownership, which constitutes a universal real right. It may be absolute (100% ownership of the property) or a joint ownership (ownership belonging to two or more persons, i.e. the joint owners).
- the bare ownership, which is a limited real right and constitutes a part of full ownership, as the bare owner lacks the advantages of the usufruct, which means he cannot use or exploit his property. Usufruct, if not otherwise determined, is inactivated when the usufructuary dies. Following the death or resignation of the usufructuary, usufruct is unified with bare ownership and the bare owner becomes full owner of the property.
- the usufruct, which is a personal servitude and constitutes also a part of full ownership. The usufructuary may use and derive benefit from the property that belongs to the bare owner. However, the usufructuary must preserve the property intact, i.e. he cannot alter the property's shape, form, size, etc, although he is not responsible for any deterioration or wear due to natural causes. Usufruct is constituted with a legal act while the person is alive, or in the event of death, or due to ordinary or extraordinary usucaption.
- The right of habitation, which is a personal servitude and consists of the right of residence in the property belonging to another, until the time of death of the beneficiary.
- The easements, which consist of a limited real right that belongs to the current owner of a specific property (dominant estate), in order that the latter is served at the expense of another property (servient estate).
- The mortgage, which is a limited real right that provides the beneficiary with the power to claim his preferential satisfaction from the value of the property that is burdened by mortgage. It must be conceptually and practically distinguished from a pre-notice of a mortgage, which is a mortgage by legal title, that is subject to the suspensive condition of final adjudication of the secured claim to the creditor and the switch into a mortgage within ninety (90) days from the fulfillment of the condition. Only when the mortgagor's claim has been finally adjudicated, the current pre-notice of a mortgage can be turned into a mortgage.
Division of real property

Properties may be divided into the following ways; the above real property rights apply to all of them.

a) horizontal property (applicable mainly to apartment buildings).
   It is a form of divided ownership. It applies when there is ownership of a separate part of the building (e.g. a building floor or parts of a floor – apartment). Horizontal ownership includes obligatory joint ownership of the common areas of the whole building, such as the plot, the staircase etc. Horizontal ownership is constituted with a notarial constitution act or a court decision. In such a case, the separate parts/independent properties bear a per thousand rate (1/1000) of joint ownership on the plot.

b) simple – vertical property.
   It is a type of divided property. It describes the different ownerships/properties on separate buildings (or parts of these buildings) that were constructed on a single land plot (field, ground). From 1992 and on, this type of property is applicable only for plots included in the urban plan (article 6 par. 2 of Law 2052/1992).

c) complex – vertical property.
   When the buildings that exist (or are under construction) on one single plot are also divided horizontally in floors, apartments, etc. Each co-proprietor is both owner of a floor or an apartment in one of the separate buildings and joint owner of a percentage on the whole plot and the other commonly owned and used things.

The most common ways of acquiring ownership of property in Greece.

The following ways of acquiring property are the most common under Greek Law:
1) acquisition by contract, i.e. a written agreement between the owner and the buyer on the transfer of ownership from a legitimate source, that must be made before a notary and be recorded (or registered).
2) acquisition by virtue of succession, whether testate or intestate,
3) acquisition by gift or by parental grant,
4) acquisition of property by auction, i.e. by act of compulsory enforcement, brought against the debtor’s property, where the ownership of property is finally acquired by the highest-bidder.
5) acquisition by the person who, in good faith, is in possession with legal title of a property for a decade (regular or ordinary usucaption),
6) acquisition by the person who is in possession of the property for twenty years (extraordinary usucaption).
7) acquisition of title by annexation of a land’s part to the adjacent land, i.e. the removal of property from an individual or legal entity and the administration to another by an act of authority (cases of such annexation are the settlement of land, the expropriation and the redistribution).
8) acquisition of property by adjudication, i.e. the award of property with a formative Court order (cases of adjudication are the distribution, the regulation limits and building to adjacent properties).
9) acquisition of property by the system of so called “consideration” (antiparochi), that counts more than half a century of life in Greece and has been linked mainly to the phase of intensive building in major cities during the decades of 70’ and 80’.

By signing the contract of “consideration” (construction contract) between the land owner and the contractor, the first undertakes to transfer a certain share (percentage) of an undivided land (co-ownerships), along with part of the individual properties to be built, to the contractor, who undertakes to construct the building. In practice, this system gives the opportunity to owners of plots to construct buildings with the help of a constructor who instead of money gets apartments in the building.

City-planning and environmental limitations in real estate property

The Constitution of Greece in Article 24 provides for special preventive or repressive measures, in order to preserve the natural and cultural environment.
In particular, special reference is made to the protection of forests, the master planning of the country, the arrangement, the development, the urbanization and the expansion of towns and residential areas, as well as at the protection of traditional sites and monuments. Within the above mentioned protection, transfer of ownership and granting of limited real rights in real estate property may be prohibited, limited or subject to a special permit of the Authorities, under special laws. Such restrictions and prohibitions are found mainly in the following cases:

**Border Areas**

By combination of articles 25 par. 1 and 26 par. 2 of Law 1892/1990, as amended by article 114 of Law 3978/2011, the acquisition of real rights in regions of Greek territory designated as border areas, is permitted only to individuals and legal entities that are Greek or have their citizenship or place of business within the Member States of the European Union and the European Free Trade Association, under the prerequisite of prior authorization by the Greek state.

**Forest Areas**

The Constitution in article 24 par. 1 prohibits the alteration of use of forests, except where rural development or other uses imposed for the public interest prevail for the benefit of the national economy. Furthermore, in accordance with articles 35 and 72 of Law 998/1979, it is provided that private forests or forest areas or parts thereof that were destroyed by fire, cannot be transferred by segmentation or by fractinal with a transaction inter vivos for a period of thirty (30) years of their destruction, while for the owners of private forests and forest areas bigger than fifty (50) acres that they want to convey to others by sale, it is established a right of preference of the Greek State to acquire them on equal terms.

**City-planning restrictions**

Under articles 24 par. 2 and 3 of the Constitution, the master planning of the country, and the arrangement, the development, the urbanization and the expansion of towns shall be under the regulatory authority and the control of the State, in the aim of serving the functionality and the development of settlements and of securing the best possible living conditions. To designate an area as residential and enable the city-planning, the properties included therein must participate, without compensation, at the disposal of land necessary for the creation of roads, squares and spaces for charitable purposes, as well as at the expenditure for the implementation of key public urban projects, as required by law. By combination of articles 6 par. 1 of Law N.651/1977, 3 par. 1 of Law of Emergency 625/1968 and 2 par.1 of Law Decree 690/1948 it is provided that the transfer of ownership of land in order to create non integral plots is prohibited.

**Archaeological Sites**

The Constitution, in Article 24, par. 6, provides that monuments, traditional areas and historic elements are protected by the State. The necessary measures to be taken for the restriction of private property in order to realize the above purpose, as well as the nature and the method of compensation of private owners, are set by Law. To permit construction in cities (municipalities) or villages (communes) or rural areas, that have been designated as sites of archaeological interest or that are located near archaeological or ancient monuments, a written consent of the archaeological service is required, after a survey is carried out. In case of an impediment, or of a building of over 250 sq.m or of height of more than two floors, the case is referred by recommendation of Antiquities at the local Council of monuments. If the opinion of this Council is negative, the interested party has the right to object against it.

**Environmental Restrictions**

The Constitution provides that the protection of natural and cultural environment constitutes a duty of the State (Article 24 par. 1). For this purpose, the State has an obligation to take special
preventive or repressive measures in the context of the “principle of sustainable development”. Recent Law 4014/2011 provides a special status of environmental licensing of projects and activities, including the constructions and operations that may have an impact on the environment. Also, in accordance with Laws 3661/2008, 3851/2010 and 3889/2010, as from year 2011, the issuance of the Energy Performance Certificate for buildings, which are used for residence (permanent or holiday), offices, commercial purposes etc is required, with several exceptions provided. The issue of this certificate is mandatory for all new buildings or for buildings that are being totally renovated and is required before the property can be leased or transferred.

Protection of the coast and beaches
In Law 2971/2001, it is provided that the coast and the beaches are properties of common use, that belong to the State, which is responsible for their protection and management, as the main destination of these zones is the unimpeded access to them.
For this reason, it is expressly provided that the construction of buildings and other structures on the coast and the beaches is not allowed, except for the pursuit of objectives related to public interest, environmental and cultural purposes.
The same law provides that if individuals claim ownership rights in areas designated as belonging on the coast, then those rights are necessarily expropriated in favor of the State.
In the same spirit, all kinds of buildings that have been constructed or erected without a permit on the coast or on the beaches, after the determination of the above-mentioned expropriation, are demolished, regardless of time of their construction or their real usage.

The recordation of the transfer of ownership and other real estate transactions
The recordation, i.e. the inclusion in public records, kept by public officials, of acts of any change of the real property ownership rights, ensures the compliance with the publicity of the property relations, as well as the protection of transactions.
According to article 1192 of Civil Code, the acts that must be recorded are the following: 1) the inter vivos transactions, including donations causa mortis, by which a real right on a property is established, transferred or abolished, 2) the adjudications or the annexations by the authorities or the award of ownership or other real rights on the property, 3) the judicial distribution of a property, 4) the final court decisions, that include sentence to a statement of will as far as a real right transaction is concerned and 5) the final court decisions that acknowledge ownership or other real right on a property, acquired by extraordinary adverse possession – usucapion.
The Civil Code also provides for the recordation of the act of the inheritance acceptance, when a property or a real right is involved, as well as for the recordation of the property leases for a period longer than nine (9) years (articles 1193 and 1208 of C.C).
Non recordation of the above mentioned acts of articles 1192 and 1193 of C.C has as a result the non transfer of the property's ownership, and the non establishment or abolishment of any other real right.
Mortgages are not recorded, but are registered in special Books of Mortgages.
There are two different recordation systems in Greece, the system of Land Registry Office (“Ypothikofylakeio”) and the system of Hellenic National Land Registry (cadastre, “ktimatologio”). Their main difference, which leads undoubtedly to the supremacy of the second system is that the first system is based on registrations on individuals, while the second system, is based on listings on real estate, which facilitates the direct control of the legal status of a property and creates a greater certainty and transparency at the trading transactions.
In Greece, currently both of systems operate in parallel, but the purpose of the State is to abolish the system of transfers and mortgages of Land Registry Offices and replace it by the centralized system of Hellenic National Land Registry (cadastre). The cadastral survey has been completed for only certain areas of the territory, while the rest is in progress. For the inclusion in a Cadastral Sheet of an act that has to be transcribed, an application is required, filed at the competent Office of Cadastre.
Along with the application, the following documents must be attached:
   a) the act that has to be transcribed at the cadastral sheets,
   b) the summary of the aforementioned act
   c) Documents proving the legalization of the person signing the application and
   d) the official extract of the cadastral diagram.
After the payment of the transcription fees, all applications are registered on the same day in the calendar of the cadastre, followed by registration in the cadastral books in chronological order of submission.

The process and costs of obtaining a property by transfer in Greece

The procedure of a property acquisition usually has the following steps:
1. Finding of the property, with the possible contribution of an estate agent. The estate agent's fee is not specified by law, but is subject to an agreement. Usually a fee of a percentage of 2% of actual price paid for the property is agreed in writing, but this may vary, depending on property value and other factors.
2. Legal due diligence (title search) of the property.
   After finding the property of his choice and before signing any contract, the buyer should assign to a lawyer the complete legal due diligence of the property.
   It is noted that the obligation for the presence of a lawyer before the notary applies where the contractual value of the property is above €29,347,03 for the jurisdiction of Athens & Piraeus. For all other jurisdictions the relevant threshold is €11,738,81.
   The title search takes place at the Land Registry Office and/or at the Cadastre Office at the property's region and includes the right of the vendor and his predecessors in title (for a time period of at least 20 years, which is the time of the basic rule of prescription of rights, according to article of C.C 249), and any encumbrances (such as mortgages, pre-notices of a mortgage, foreclosures and court claims) against those persons.
3. Technical survey of the property.
   When the property to be transferred is land or lies off the town plan, it is necessary to recruit an engineer, who will check whether the property meets the legal conditions for construction. Also, it is advisable to check the compliance with the new arrangements for settlement of illegal constructions.
4. The property transfer tax return.
   Before signing the contract, the buyer or an authorized person has to submit at the competent Tax Office the property transfer tax return, that is drafted by the notary and is signed by both the seller and the buyer. After the transfer tax is paid, the department of Capital of the Tax Office grants a copy of this transfer tax return, that must be attached to the notary's contractual act.
5. The signature and the recordation of the notarial act of property transfer.
   The signature of the act of property transfer takes place before a notary, after the collection of necessary legal and appropriate supporting documents, such as an official copy of the building permit, a solemn protestation by the seller, concerning the statement of his property income before the competent tax authorities, a certificate of conformity for payment of Local Authorities taxes, a certificate for the declaration of inheritance tax or gift tax to the competent tax authority, when the property is acquired by virtue of succession or gift, a tax and insurance certificate for the seller, a certificate of payment of the transfer taxes to the competent Tax Authority of the property, an Energy Performance Certificate, etc.
6. The recordation of the transfer title takes places either at the Land Registry Office or at the Hellenic National Land Registry (cadastre) of the region where the property is located, after the submission of the notarial act and a summary of it, along with an application and the payment of the recordation fees. The certificates of recordation of the transfer act are granted within a reasonable period of time.

Illegal constructions – amnesty laws
In Greece, construction of buildings in excess of structural requirements and constraints provided by law, is quite widespread and common. For instance, it is very common that a flat is built in excess of the building permission and, for example, it has an actual surface of 200 sq.m. although the building permission is for 150 sq.m. Also, it is very common that houses or other buildings are constructed with no permission at all. This abnormality is so common, that on the one hand the State looses income related to property ownership and use and on the other hand, if the law was enforced, the demolition of such constructions would create a serious social problem. For this reason and because of the wide request for settlement of these sites, recently the Greek legislator has issued a series of acts for the administrative settlement of planning breaches and exceedances:

a) By Law 3843/2010, it was enacted, upon payment of excise fine, the fit and maintenance for forty (40) years (and not the permanent legitimation, as it was considered to be unconstitutional) of what is referred to as “semi-open” spaces and the spaces in the basement, ground or other level of the building, located within the approved building volume, under the building permit issued or revised until 02.07.2009, that have evolved in areas of principal use, in excess of the conditions and limits of construction of the building and under certain conditions prescribed by the Law, if their use is not prohibited by the city-planning provisions for land use.

b) Moreover, recent Law 4014/2011 provides the suspension of sanctions for thirty (30) years, after paying a fine, as specified in this law, for buildings of which the main structure has been completed until 28.7.2011 and have been built in excess of either the building permit or the conditions or restrictions of the construction of property or without planning permission at all. These recent enactments give an amnesty to these violations and will allow owners of buildings with illegal constructions to transfer them, lease them etc.
Costs related to the acquisition of real estate

The costs of the notarial act’s signature include the notary’s fee - which is usually paid by the purchaser, as well as the lawyer’s and the estate agent’s (if any) fee for each party. The cost of the contract’s recordation, paid by the purchaser, includes the recordation fee of the Land Registry Office and/or the Cadastre Office.

The estate agent’s fee is not specified by law, but is subject to an agreement. Usually a fee of a percentage of 2% of actual price paid for the property is agreed in writing, but this may vary, depending on property value and other factors.

The Lawyer’s fees are defined as a percentage of the contractual value of the land transferred. The so called “reporting percentages” are the following:

- For the value up to €44,000: 1%
- For the value between €44,020 - €1,467,351: 0,5%
- For the value between €1,467,352 - €2,934,702: 0,4%
- For the value between €2,934,702 - €5,869,405: 0,3%
- For the value between €5,869,405 - €14,673,514: 0,2%
- For the value between €14,673,514 - €29,347,028: 0,1%
- For the value between €29,347,028 - €58,694,057: 0,05%
- For the value above €58,694,057: 0,01%

The above mentioned fees are subject to V.A.T 23%.

The Notary’s fees are usually estimated at 1,2% on the contractual value of the property transferred.

In relation to the above mentioned lawyer’s fees, the law provided that they are obligatory and a contract could not be signed without proof of their payment, both for the buyer and the seller’s lawyers. Recently this obligatory payment has been abolished, and the parties may agree freely the legal fees with their lawyer.

Bank finance for the acquisition of real property

Often, in real estate transfers in Greece, the price is paid to the seller by loan, that is granted by the bank to the buyer. In this case and for the discharge of the loan to the bank, a pre-notice of a mortgage is granted, in favor of the bank. In terms of process, the registration of a pre-notice of a mortgage in favor of the bank, at the expense of the buyer of the property, follows the signing of the contract of transfer and the contract of the loan agreement between the bank and the buyer and it takes place by filing an application before the Court of First Instance of the district where the property is located.

In this procedure, usually an attorney of the bank is present, who submits an application before the competent Court, as well as the buyer himself, or an authorized attorney, who
consents to the registration of a pre-notice of a mortgage on the property. The decision is issued on the same day and is recorded in the land registry office or the cadastre office of the region of the property. The pre-notice of a mortgage is removed by the same procedure, i.e. by decision of the Court of First Instance, following a request by the buyer and by consent of the bank that has been paid out.

**Evaluation of real property**

The value of land in Greece is assessed according to a so called “system of objective value” (or tax value). This system provides for a minimum value of real property according to objective criteria such as position, size, public facilities in the area, age of a building etc. This system has been imposed so that the tax authorities have a reference minimum value in imposing taxes in relation to land. In cases of transfer of land, the transfer tax is calculated on either that “objective value” or the value agreed in the contract, whichever is the highest. The objective values are usually significantly lower than the market values, but recently the government has stated the intention to bring them closer. Similarly to taxes, most other fees and charges imposed in a land transfer contract are dependent on the objective value of the land or the contractual value of the land (whichever is the highest). Not all areas in Greece have been valued, so in some areas (mainly rural) the tax authorities make estimation of the value according to similar transactions or other available data.

**Taxes imposed on the transfer of property and applicable exemptions**

As from 01.01.2006 (only for the buildings for which the building permit was issued after that date), a VAT of 23% is imposed on the first sale of newly built buildings by a manufacturer, or by a person who deals professionally with the construction and the sale of buildings. For all other properties that don’t have the obligation to pay VAT, as above-mentioned, the transfer is charged with real estate transfer tax at a progressive scale (i.e. 8% for a value of property up to 20,000,00 € and 10% on the excess). Exceptionally, the acquisition of a primary residence is exempt from payment of transfer tax if the purchaser or his spouse or a minor child is domiciled in Greece and no one of them is entitled to full ownership or usufruct or habitation in a residence (article 1 of Law 1078/1980, as amended by article 21 of Law 3842/2010). These provisions apply to contracts for the purchase of property where the purchaser resides in Greece or intends to do so and falls into the following categories of beneficiaries: a) Greek citizens b) repatriates from Albania, Turkey and the Former Soviet Union c) Citizens of the Member-States of the European Union d) Recognised refugees, in accordance with the provisions of Presidential Decree 96/2008 and e) Third-countries nationals, who enjoy the status of long-term residency in Greece, in accordance with the provisions of Presidential Decree 150/2006. The above-mentioned tax exemption is granted to an unmarried individual for the purchase of a residence of total value up to EUR 200,000,00, including the value of a parking space and a storage space of 20 sq.m each, under the prerequisite that those spaces are part of the same property and that they are acquired simultaneously with the same purchase contract, and for a land purchase of total value up to EUR 50,000,00. These amounts of exemptions can be increased, depending on the marital status, number of children etc.
The exemption is granted provided that the property will not be further transferred by the buyer for a period of at least five (5) years. In case that the purchaser further transfers or establishes any real right – other than mortgage – on the property, before the expiration of the five (5) years period, then he is obliged, before the new transfer or the establishment of any real right of the property, to submit before the competent Tax Office a property transfer tax return and pay the relevant tax for which he was initially exempt.
In any case, due to frequent changes in taxation of property, it is strongly recommended that all property related taxes and charges are re-estimated before any purchase.

Main annual taxes and charges related to property ownership

All properties in Greece, belonging to individuals or legal entities on the 1st of January of every year, are burdened with the Tax of Real Estate, following the provisions of Law 3842/2010.
The above-mentioned term property includes: a) the right to full and bare ownership, the usufruct and the habitation on a property and b) the right to the exclusive use of parking spaces, auxiliary spaces and swimming pools, that lie at the jointly-owned part of basement, terrace or non-covered building space of these properties.
The taxable value of buildings (main and auxiliary spaces) is determined by several factors, such as the surface, the price zone, the floor, the age of building, the facade, the percentage of ownership and other special circumstances.
The value of the property which is owned by legal entities is taxed at a rate of 0.6%, with several exceptions provided.
The total value of over €200,000,00 of the property of each individual is taxed on scales (from 0.2% up to 2%).
In order to deal with a common phenomenon, where particularly offshore companies, that had acquired a property in Greece and whose activity is not part of the normal activity of other companies (such as industrial, commercial, services, etc., with gross income from these activities greater than the gross income from the property), the Greek legislator introduced by Law 3091/2002 the liability of legal entities in general, that have full property rights or bare ownership or usufruct property in Greece, to pay a yearly special property tax (initially 3% on the value of property, which has been recently increased to 15% by Law 3842/2010).
The Law provides for many cases of exemption from the obligation to pay the above-mentioned tax, that are related mainly to the nature of the activity of legal persons. Also, an exemption from this tax obligation is provided for companies that have their headquarters in Greece or another EU country and are usually: a) S.A. companies with registered shares to individual or S.A. companies that indicate the individuals who own their shares, provided that those individuals have been awarded with a tax registration number in Greece, b) or companies with limited liability, if the shares are owned by individuals or if these companies declare the ultimate individuals who are owners of their shares, provided that these individuals have been awarded with a tax registration number in Greece.
Income from property rental is not taxed separately, but is included in other income from any other cause and in this way it is taxed as a total and by scale of income. Gross income from rental property is automatically charged with a percentage of 3.6% stamp duty (excluding the housing rentals) and with a percentage of 1.5% additional tax, which can
be increased up to percentage of 3%, in cases of an income derived from the rental of a residential area of over than 300 sq.m.

Apart from the above-mentioned, yearly paid taxes, another duty has been imposed by Law 4021/2011, in order to reduce the budget deficit of the State, having created a great controversy already. It is called “extraordinary duty on electrified structured surfaces” and is determined by the total surface of the property, the zone price and the age of the building.

**Real Estate Investment Companies**

Real Estate Investment companies are limited by shares companies (i.e. S.A companies), established with the sole aim to acquire and manage real estate property. Their minimum share capital is twenty nine million three hundred and fifty thousand euros (€29,350,000) at a minimum, fully payable upon establishment of the company. Prior to the issuance of permission for establishing a Real Estate Investment Company, permission by the Stock Market Commission is required. A similar permission is required in case an existing company is converted into a Real Estate Investment Company. For granting the establishment permission, the Stock Market Committee evaluates the investment plan, the organization, the company’s technical and financial assets, the reliability and experience of the individuals that are going to manage it and the suitability of the people establishing it, in order to ensure the good management of the company. The company has the obligation to invest its funds only in:

a) Real estate, at least 80% of its assets.

b) Stock market instruments, according to article 3 of Law 3283/2004.

c) Other movables required for the company’s operational needs that, in addition to the real estate acquired by the company to service such needs, must not exceed ten percent (10%) of the asset value, at the time of acquisition.

The company must apply before the Athens Stock Market or other organized market for the listing of its shares within one (1) year of its establishment. In case of a conversion of an existing company into a real estate investment company, the obligatory filing of an application for listing the stock in an organized market must be effectuated within one (1) year from the end of the conversion procedure. The listing of the company’s shares is effectuated according to the provisions in force, regulating the listing of stock in Athens Stock Market S.A. or other organized market.

The company must pay annual dividends to its shareholders of at least thirty five percent (35%) of its annual net profits. A lower percentage, or no percentage, may be distributed, following a decision by the general meeting, under the condition the company statutes include such a provision, either for the creation of an extraordinary non-taxable reserve fund made up of other earnings besides capital profit or for distributing free shares to the shareholders by increasing the share capital, according to the provisions of Codified Law 2190/1920.

It is prohibited to transfer company real estate property to company founders, shareholders, members of the board of directors, general managers or managers, their wives or blood and affinity relations up to the third degree of kinship. A real estate investment company may be converted into a real estate mutual fund, under certain conditions.

The stock issued by real estate investment companies, as well as the transfer of real estate to this company are exempt from any kind of tax, duty, stamp duty, contribution, right or any other charge in favor of the State, public legal entities or, in general, third parties. The exemption does not apply to the capital gain realized by the seller at the time of the sale of
real estate to the R.E.I.C. The subsequent transfers of real estate by real estate investment companies are subject to the ordinary tax provisions (not exempt). Real estate investment companies are exempt from income tax for the income created by securities in general, whether in Greece or abroad, acquired by parties not subjected to tax deduction. Especially regarding the interest of bond loans, the exemption applies under the condition the titles that grant the interest in question were acquired at least thirty (30) days prior to the date set for cashing the interest.

Real estate investment companies must pay tax with a coefficient set at ten percent (10%) of the valid European Central Bank intervention rate (Interest Reference Rate) plus one (1) point, and is calculated on the average of the investments, plus the available funds, in current prices. In case of a change of the Interest Reference Rate, the new calculation value is valid as of the first day of the month following the change. The tax is payable to the competent Tax Authority within the first fifteen days of the month following the period recorded in the bi-annual investment tables. Upon payment of the aforementioned tax, the company’s and shareholders' tax obligations are exhausted.

The provisions of the beneficial Law 2166/1993 regarding the conversion of enterprises are also applicable for real estate investment companies, which: a) are established either by the merger of two or more companies that own real estate, or by the splitting-off or dilution of a company sector owning real estate, or b) acquire real estate, whether through merger by absorbing another company owning real estate or due to the splitting-off or dilution of a company sector owning real estate.
To what extent is property protected in Greece?

The Greek Constitution provides that property is under the protection of the State; however, any rights deriving there from may not be exercised contrary to the public interest.

Property is deemed any right (in rem, in personam, intangible) that may be financially evaluated; and the extent of property expropriation may vary from total deprivation, deprivation only of the right of use, or simply the restriction of the way of use of property etc.

Pursuant to the provisions of the Constitution the right to property can be restricted in favor of the public interest when applying compulsory expropriation procedures. The Constitution sets three conditions for the permitted alienation of the owner from its real property right:

- the established public benefit, which in addition, justified as well, may not be served by any other means less onerous to the owner;
- the legislative provision that must precede the expropriation and set out in detail the manner and the procedure of the expropriation, in order to entitle the Administrative Authorities to proceed to expropriations for a specific cause (by virtue of formal or regulatory law); and
- the full compensation of the owner, which is determined by a Court decision (the provisional compensation by a decision of the Court of First Instance and the final compensation by decision of the Court of Appeals).

Can anyone be deprived of his property?

No one shall be deprived of his property except for reasons of public benefit which must be duly established at the time and in the way provided by Law and, at all times, following compensation in full of the owner corresponding to the value of the expropriated property as at the time of the court hearing on the provisional determination of such compensation. Where the final determination of compensation is requested, the value of the expropriated property shall be the value as at the time of the respective court hearing.

What does the fast track law provide for strategic investments in Greece?

Pursuant to the provisions of the recent legislation regulating the acceleration and the transparency of the licensing procedures for the implementation of Strategic Investments in Greece, the compulsory expropriation of real property or the acquisition
of rights in rem over real property is permitted in order to facilitate the Strategic Investments and the ancillary or accompanying works. Strategic Investments are deemed the productive investments of significant quantitative and qualitative contribution in the overall national economy, which enhance the efforts of Greece to beat the financial crisis, concerning in principal the construction, reconstruction, expansion or modernization of infrastructure and networks in the fields of industry, energy, tourism, transportation and telecommunications, health, waste management, high technology and innovation, provided that they meet the requirements provided by Law. Such investments are deemed of high priority and great significance. Strategic Investments may be implemented either by the State or the private sector through Public Private Partnerships or contracts of mixed nature. The evaluation of the property to be expropriated pursuant to the above named procedure, the decrease in value of the remaining parts of such property, the profit of the adjacent properties as well as the amount of the due compensation is effected by virtue of a relevant report drafted by the Greek Body of Certified Evaluators.

What is the legal protection against the expropriation of property?
The legal protection against the expropriation of property is the Petition for Annulment before the Council of State and, by means of injunction measures, the Petition for Stay before the Suspensions Commission of the Council of State.

Which is the procedure for the determination of the compensation?
The due compensation shall in all cases be determined by the Civil Courts. Such compensation may also be provisionally determined by the Court following the hearing or the summoning of the beneficiary, who may be obligated, at the discretion of the Court, to furnish a respective guarantee in order to collect such compensation, in the manner provided by Law. Prior to the payment of the final or the provisional compensation as determined by the Court, the rights of the owner shall remain intact and occupation of the property is prohibited. The compensation as determined by the Court is mandatorily paid within one and a half years at the latest from the date of issuance of the Court decision concerning the provisional determination of the due compensation, and, in the event of an application directly for the final determination of the compensation, from the date of issuance of the Court decision, otherwise the expropriation is ipso jure revoked. The compensation, as such, is exempt from any taxes, deductions or fees; the estimated time for the payment of the compensation is approximately two (2) years. In particular, in case of compulsory expropriation of cultivated agricultural property or fruitful private forest or fruitful rural property, which was duly occupied following the execution of the expropriation of such property, any person having a right in rem over such property is entitled to request compensation for lost profits from the person responsible to pay the expenses for the expropriation, for the time period commencing at the time of the occupation of the property until the time of collection of the prepaid
compensation, provided that the delay of the such payment is not attributable to the applicant or due to default of any third party.

**Which is the competent court for determining the compensation?**

The single-member Court of First Instance of the region where the expropriated property or its largest part is located is the competent Court to determine the provisional compensation and respectively the Court of the Appeals is competent to determine the final compensation. Within thirty (30) days from notification of the decision of the Court of First Instance any interested party is entitled, even if it was not a litigant party in the trial for the determination of the provisional compensation, to apply for the determination of the final compensation. In the event that any of the interested parties is residing abroad or is of unknown residence, the deadline to apply for the determination of the final compensation shall be sixty (60) days for all interested parties. The beneficiary of the compensation is determined by a Court decision pursuant to the special proceedings provided by the applicable Law. The determination of the beneficiary may also be effected by virtue of an administrative act in the event that the unit price has been determined extra judicially.

**What is the procedure for compulsory expropriation?**

The compulsory expropriation of a real property as well as the establishment of an in rem right over such property, if permitted by Law, for public benefit reasons, is declared by virtue of decision of the Secretary General of the Periphery in which the property to be expropriated or the largest part of such property is located. The decision is issued following the recommendation of the Land Registry of the respective prefecture. In case of expropriations of great importance, at the discretion of the competent, pursuant to scope of such expropriation, Minister and the Minister of Finance, the expropriation may be declared by decision of the of the Cabinet.

**Which is the amount of the due compensation?**

The compensation must be full and reflecting the value of the expropriated property as at the time of the hearing of the case for the provisional determination of the compensation or, in case of application for determination directly of the final compensation, as at the time of such hearing. In the event that only a part of a property is expropriated, and as a result of such partial expropriation the value of the remaining part of the property is decreased or such remaining part of the property may no longer be used for the intended use, the Court decision determining the compensation for the expropriated property determines also a special compensation for the remaining part of the property, which is payable together with the one due for the expropriated property.

**Is any change in the value of the property, following the publication of its expropriation, taken into account?**

Any change in the value of expropriated property occurring following the publication of the act of expropriation resulting exclusively from the expropriation per se shall not be taken into account.
Expropriation may be extended to other properties
In the event that the execution of works that serve the public benefit or works of general significance to the economy of the country, the expropriation in favour of the State of wider zones beyond the areas necessary for the execution of such works is permitted. The Law specifies the terms and conditions of such expropriations, as well as the issues pertaining to the disposal for public or public utility purposes at large, of areas expropriated in excess of those required for the execution of such works.

The property to be expropriated may be purchased instead
The Secretary General of the Periphery or, as the case may be, the competent Minister for the specific expropriation may proceed directly to the purchase of the property instead of the compulsory expropriation of same.

In what way is the compulsory expropriation of property effected?
The compulsory expropriation is effected by payment of the compensation, provisional or final, to the beneficiary determined by the Court decision or the actual beneficiary of such compensation.
However, the compensation may be off set with the increased value of the remaining part of the expropriated property, where such increase in value results from the executed works, or the compensation may be paid in kind, provided in both cases that the beneficiary expressly agrees in writing to it.

Is commencement of the works permitted prior to the determination and payment of the compensation?
In order to execute works of general significance for the national economy, it is possible that by special decision of the Court of Appeals such works may commence prior to the determination and payment of the compensation. Such expropriations are declared by decision of the Cabinet, whereby such option is expressly provided.

Can underground tunnels be built without payment of compensation?
The Law may provide that, underground tunnels may be built at the appropriate depth without payment of compensation, for the execution of works of apparent public benefit of the State, works of Public Law legal entities, local government agencies, public utility agencies and public enterprises, under the condition that the usual exploitation of the property situated above such underground tunnels shall not be hindered.

How is the compensation payment effected?
The natural or legal entity responsible to pay the compensation, the litigation expenses and the legal fees, as determined by the Court decision, must deposit the aforementioned amounts to the Deposits and Loans Fund in favour of the beneficiary.

The expropriation Court decision must be transcribed in the Land Registry
Following the conclusion of the compulsory expropriation the beneficiary of such expropriation is obligated to proceed without delay to the transcription of the expropriation Court decision in the competent Land Registry, by submitting the
documentation evidencing the conclusion of the expropriation, as well as a copy of the court decision determining the beneficiaries, in the event that the beneficiaries have been declared by the court decision that determined the compensation.

The claim of compensation is time barred
Following the conclusion of the compulsory expropriation of the property, the claim to collect the compensation, as determined by the Court decision provisionally of finally, is time barred after the lapse of a ten year period from the occupation of the expropriated property.

Can a compulsory expropriation be revoked?
The Authority that declared the compulsory expropriation may by its decision revoke such expropriation, partially or in total, prior to the conclusion of the expropriation. The compulsory expropriation is mandatorily revoked by an act of the authority that declared same, following the petition of any interested party presuming a right in rem over the expropriated property, in the event that within four (4) years from its declaration no application for the determination of the compensation is filed or such compensation is not determined extra judicially. The application is inadmissible if filed following one (1) year after the lapse of the four year time period and, in any case, following the publication of the Court decision that determined the compensation.

Can a concluded compulsory expropriation be revoked?
A concluded compulsory expropriation which was declared in favour of
- The Greek State;
- Public Law legal entities;
- Local government agencies of A’ and B’ classes;
- State owned enterprises and enterprises owned by Public Law legal entities; and
- Public utility organizations may be revoked, partially or totally, in the event that the competent Authority deems that the expropriation is not necessary for the fulfillment of the initial or other scope, which is defined by Law as of public benefit, and the owner of the expropriated property accepts the revocation.
The expropriated property may freely be sold, in the event that the owner of the expropriated property declares that it does not wish the revocation or fails to reply within three (3) months from the receipt of the invitation to reply on the revocation issue.

The compulsory expropriation may be lifted ipso jure
The compulsory expropriation may be lifted ipso jure, in the event that it is not concluded within one and a half years following the publication of the Court decision determining the provisional compensation and, in case of a direct final determination of such compensation, following the publication of such decision.

Is it possible to apply directly for the determination of the final compensation?
The application for the final compensation may be filed directly before the Court of Appeals, provided that no application of any interested party is pending for the determination of the provisional compensation or no Court decision determining
same has been issued. The decision of the Court of Appeals is subject only to cassation pursuant to the provisions of the Civil Procedure Code.

Is an amicable settlement of the compensation possible?

During the trial and prior to the hearing of the application for the provisional or the final determination of the compensation, the Court seeks for the amicable settlement between the litigant parties. In the event that such settlement is achieved the relevant minutes of settlement are drafted. The execution of such minutes by the litigant parties is deemed the conclusion of the compensation determination. In addition, the compensation may be determined by virtue of an extrajudicial settlement, which is drafted in writing and free of any charge.

Penalties

Any person who intentionally designates false boundaries or submits false titles of property or becomes a litigant party under any capacity whatsoever in the relevant trial, in order to support non existing rights over an expropriated real property, either on its own account or on the account of any third party, shall be punished with imprisonment, without prejudice to any heavier penalty provided in the Greek Penal Code. Any person who intentionally hinders the execution of preliminary works for the measurement of the property to be expropriated for the drafting of the cadastral diagram and table shall be punished with imprisonment of maximum six (6) months, if a heavier penalty is not provided by Law.
FOOD & BEVERAGE
How is in Greece the regulatory framework for food & beverage constructed?

In Greece, the regulatory framework for food & beverage is based on EU regulations and directives that are implemented through national by-laws, namely ministerial decisions and presidential decrees. Country specific regulations apply in cases in which the EU law may be incomplete or absent or allow the member states to make exceptions.

What are the most significant national regulatory acts?

The basic national regulatory act is the Code of Foodstuffs, Beverages and Objects of Common Use (Κ.Τ.Π., hereafter referred to as the “Food Code”), which was introduced in 1971 and codified by the Ministerial Decision 1100/1987, subject to numerous amendments due to permanent developments in EU and international law, containing general-horizontal und product specific-vertical provisions. Other significant acts are the Market Law Regulation 7/2009, the Ministerial Decision 15523/2006, which is the main act implementing the EU hygiene package, and the Sanitary Regulation Α1β/8577/1983.

Which are the competent authorities for food & beverage?

In Greece, several ministries are in charge of food issues, mainly the Ministry of Rural Development & Food, the Ministry of Health & Social Solidarity, and the Ministry of Development, Competitiveness & Shipping. However, food safety and consumer protection is the primary responsibility of Food Control Authority (ΕΦΕΤ), which is supervised by the Ministry of Health & Social Solidarity and appointed as the contact point for the European food authorities and the Codex Alimentarius Commission. Another important authority is the General State Chemical Laboratory (Γ.Χ.Κ.), established in 1929 within the Ministry of Finance, with a wide spectrum of activities, such as conducting samplings and laboratory tests on various food including alcohol drinks, granting approvals for new, functional food products and offering technical-scientific support to other authorities. Moreover, the Supreme Chemical Council (Α.Χ.Σ.), an organ of General State Chemical Laboratory, carries out a significant legislative work on issues of food composition and food distribution. Worth mentioning is finally the National Organization for Medicines (ΕΟΦ), which is exclusively competent for food supplements and dietetic foods.

By which legislation are the food hygiene requirements stipulated?

Like in other EU countries, food hygiene is also in Greece a domain primarily regulated through binding, directly applicable EU norms, namely the EU Regulations 178/2002,
852/2004, 853/2004, 854/2004 and 882/2004. National regulatory acts, such as the Ministerial Decision 15523/2006 and the Presidential Decree 79/2007, the latter one referring to specific hygiene rules for food products of animal origin, focus essentially on administrative, procedural issues resulting from the implementation of aforesaid EU norms, with particular regard to the registration and approval requirement for food business operators establishing activities in Greece. On national regulatory level, general and specific requirements on food hygiene are notably stipulated in the Sanitary Regulation A1β/8577/1983. This act applies to companies acting in the sector of retail and wholesale trade of food (supermarkets, cash&carry shops, wholesale centers, bakeries, fast food shops, restaurants, entertainment shops, etc.). It will be soon replaced by a new sanitary regulation that fully complies with the respective EU hygiene standards. National guides to good practice drawn up for every single food business sector and officially approved by the competent authority (ΕΦΕΤ or the Ministry of Rural Development & Food) deserve consideration in order to safely comply with the hygiene requirements. This refers especially to food hygiene aspects that are not explicitly or specifically regulated.

**What requirements for the labeling of food products are to be considered?**

In Greece, food labeling regulations are, to a great part, harmonized with EU law. The provisions in Art 11 and Art 11a Food Code regarding the general labeling requirements comply with the prescriptions of Directive 2000/13/EC, Directive 90/496/EEC, and other related EU Directives.

Greece maintains though for a number of products, such as meat and dairy products, fish, honey, fruits & vegetables, soft drinks, beer and legumes, specific labeling requirements in addition to the general ones. The respective stipulations are incorporated into the Food Code and the Market Law Regulation 7/2009.

The use of Greek language is obligatory; multi-language labeling is permitted.

**How nutrition and health claims are currently regulated?**

The EU Regulation 1924/2006 on nutrition and health claims made on foods brought significant changes into the Greek regulatory system and the corresponding practice of Greek authorities. Before 1 July 2007 when this Regulation entered into force, nutrition claims were allowed only to a quite limited extent as specifically stipulated in Art 10 Food Code, and any reference to health promoting effects of food was strictly prohibited. Nutrition claims may now refer also to other substances than the nutrients listed in Directive 90/496/EEC, but their handling shall fully correspond to the conditions of use set out in the above Regulation. Some of previously permissible nutrition claims (for example “cholesterol-free” or “free of hydrogenated fat”) are, therefore, not any more allowed.

The most important impact of the EU Regulation 1924/2006 to the Greek law was the legalization of “health-related claims” and “reduction of disease risk claims” under the strict conditions defined in this Regulation, which requires the adoption or authorization of such claims by the European Commission.

In principle, it remains prohibited to indicate on a label or to advertise that foodstuffs have the capacity to prevent, treat, or cure human diseases.
What is the standing of food ingredient regulations?
The provisions of Food Code regarding the use of additives, flavorings and enzymes in food are entirely harmonized with several respective EU Directives, but not updated in line with the EU Regulations 1331/2008, 1332/2008, 1333/2008 and 1334/2008. In any case, Greece shall follow all new EU law stipulations in this area of food regulation. National-specific ingredient rules are stipulated for certain food products in the Food Code. Such rules shall not apply to foodstuffs with a non-complying composition but legally produced or marketed in another EU country or in a country that is contracting party to the EEA Agreement.
In respect to the setting of maximum residue levels for veterinary medicinal products, pesticides and certain contaminants in foodstuffs, Greece has implemented all relevant EU Regulations. Besides, the Food Code contains several provisions on this topic for single food products and food ingredients.

Especially regarding GMO’s?
Until now, the Greek authorities adopted an absolutely negative attitude towards genetically modified food. This explains the factual irrelevance of authorization procedures stipulated by the EU Regulation 1829/2003 and the Directive 2001/18/EC. The Ministry of Rural Development & Food and its directorates in charge of implementing the aforesaid legal acts play a mere advisory role with respect to application procedures initiated in other EU countries.

What should one basically know about the import of food products from third countries?
Such products, as well as food ingredients and package materials, must comply with the prescriptions of Food Code and other relevant regulatory acts that are in force for similar products of Greek origin.
In principle, food products containing edible raw materials that pursuant to the standards of Food Code are to be considered safe, or foodstuffs processed with allowed technologies can be freely traded.

What kind of food has to undergo pre-marketing-authorization in Greece?
Besides novel food and novel food ingredients falling under the specific stipulations of EU Regulation 258/97, “normal food enriched with nutrients such as vitamins, minerals, amino acids etc.”, which is the most common method of producing functional food, has to undergo pre-marketing authorization by the Supreme Chemical Council, pursuant to Art 5 par. 1 Food Code. The same approval requirement is stipulated also by article 3 par. 10 Food Code that refers to any permissible “fortification of normal food and drinks with vitamins”.
The approval of Supreme Chemical Council is required even for fortified food legally produced and/or marketed in another EU member state, as well as for a food enriched only with those vitamins and minerals listed in Annexes I and II of the EU Regulation 1925/2006. Due to the fact that specific maximum limits for the addition of vitamins and minerals to normal food have not been uniformly stipulated on Community level yet, the Supreme Chemical Council continues to enjoy substantial discretion in valuating and defining such limits.
For which kind of fortified normal food is though pre-marketing-authorization not required?

The approval requirement does not, however, apply to those products that as to their composition (type and content of ingredients) are to be considered of the same kind such as the products already approved by the Supreme Chemical Council. The decisions of Council by which the marketing of concrete food products has been permitted are given by Art 5 par. 2 Food Code the sense of a general act that becomes automatically effective to all similar products.

Does the Food Code or another regulatory act define substances permitted for food fortification?

Apart from the application of EU Regulation 1925/2006, on this topic there are very few provisions in the Food Code, which explicitly allow the fortification of some foodstuffs (culinary fats, spreadable fats, fish preparations) with certain vitamins. The addition of other (than vitamins and minerals) substances with a particular nutritional or physiological effect, such as plant extracts and other bioactive substances, to normal food is currently not regulated by a specific national law or by-law, especially in the form of positive or negative lists, and must be evaluated by the Council on a case by case basis.

In general, the use of bioactive substances such as amino acids, flavonoids, herbal extracts, etc. in normal food is considered by the Greek authorities with high reservation.

Which sort of fortified food was approved by the Supreme Chemical Council until now?

The approvals granted since 1997 by the Council refer mostly to vitamin and mineral substances that are meanwhile permitted to be added to food in accordance with the EU Regulation 1925/2006. The Council generally ruled that certain vitamins and minerals may be added to milk and sips based on milk proteins, to flour, to bakery and confectionary products, several cereal products and breakfast cereals, as well as to desserts and caramels.

Furthermore, the Council approved alcohol free drinks containing plant extracts such as guarana extract with caffeine, cannabis extract and black tee extract. Taurine, glucuronolactone and caffeine were accepted as co-ingredients of energy drinks as well. With regard to probiotics it is finally to mention the marketing-permission of powder sip based on milk with Bifidus culture.

What are the requirements for the approval procedure?

The application for getting a marketing approval by the Supreme Chemical Council must be submitted to the Food Division of General Chemical State Laboratory, which is in charge of working out a proposal to the Council, and be accompanied by several documents containing especially reliable information on product safety. The “good history” of product concerned is namely of crucial importance for achieving the approval by the Council.

Further, it is to mention that the documents stating the analytical data of final product and the detailed methods of control shall bear the signature of a chemist or chemical engineer or another scientist who is officially authorized to conduct and sign a chemical or biological analysis.
Which procedure shall be initiated in order to legally market dietetic products and food supplements in Greece?

Pursuant to national regulatory acts implementing the respective EU Directives, every person placing dietetic products (PARNUTS) or food supplements on the Greek market shall immediately notify the National Organization for Medicines (ΕΟΦ) of that placing, i.e. this authority is to be notified the latest upon starting selling the product in Greece. Only for foods intended for use in energy-restricted diets for weight reduction, the notification may be made within a period of 3 months from the moment of first placing the product on the market.

The notification requires, by filling in a standard application form, the submission of several data depending on product category and the product itself. A notification fee is to be paid as well.

Are there any restrictions regarding the selling points of such products?

Yes. Foods intended for use in energy-restricted diets for weight reduction can be sold only in pharmacies, in specialty stores or in grocery stores with specialty departments. Further, foods for special medical purposes may be marketed only through pharmacies or for use in hospitals, while food on infant formulae shall be sold exclusively in pharmacies. From the next year, it is though planned to eliminate the sales monopoly of pharmacies for the last mentioned category.

As regards food supplements, it is prescribed that they can only be sold in pharmacies.

What should one know about the permissible composition of food supplements pursuant to the Greek legal standards?

By the Joint Ministerial Decision (JMD) Y1/Γ.Π.127962/2003, Greece entirely adopted the positive lists of vitamins, minerals and their compounds stipulated in Annexes I and II of the Food Supplement Directive 2002/46/EC. Moreover, it applied from the beginning an absolute ban on trade in food supplements containing vitamins and minerals not included in the above lists.

Regarding “other substances” that may be used for the manufacture of food supplements, there is no specific regulation in the above JMD or another legal act. ΕΟΦ is quite reserved towards food supplements containing “other substances”. Such reservation results often in denying the product marketability, although the product at issue is legally produced and/or marketed as food supplement in other EU countries. This refers especially to substances that are deemed to induce a pharmacological action leading to the conclusion that the product concerned shall be categorized as medicine.

Recently, Greece recognized that the maximum dosage amounts previously stipulated therein for each one of listed vitamins and minerals were moving at extremely low levels compared to the maximum amounts defined for vitamins and minerals in other EU countries. By accordingly amending the above JMD, no new maximum amounts were defined for vitamins and minerals used in food supplements. ΕΟΦ had basically proposed the adoption of the maximum limits elaborated by the European Committee for Food in 1993 and revised until 2003, and in respect to those micronutrients for which the aforesaid Committee had not published maximum amounts due to insufficient data, the well documented conclusions of the Institute of Medicine Food and Nutrition (US National Academies of Science) and of the Expert Group on Vitamins and Minerals (UK). Such proposal remains, although not ratified by
regulatory act, a relevant benchmark for the product assessments conducted by the above authority.

In case of (allegedly) infringing food regulations, what are the possible sanctions and available options of defense?
The manufacture and marketing of food against the prescriptions of European and national legislation is considered in Greece as a serious infringement of law. Besides criminal law consequences against any responsible individuals, such infringement may result in an administrative fine up to 1.000.000 € depending on the frequency and gravity of offence at issue as well as on its impacts on public health and consumer interests. In addition, the competent authority can revoke temporarily or definitely, partially or wholly the operating license issued to the infringing company. Especially in emergency cases referring to risks arising for the public health, the authorities may also order the immediate withdrawal of unsafe food product from the market and the confiscation of quantities concerned.

Food operators are given the right to defend themselves in front of administration organs that are in charge of imposing the above administrative sanctions. Further, they can submit in front of higher administration organs objections against the sanctions imposed on them by the administration organs at first instance. The decisions of administration organs on imposed sanctions are finally subject to annulment or revision in front of the competent administrative courts.

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AREAS OF PRACTICE

Food Law
Administrative Law
Commercial Contract Law

Company Law
Real Estate Law
Commercial Litigation
LIFE SCIENCES
PHARMACEUTICAL PRODUCTS- PRICE DETERMINATION

How is the price of a pharmaceutical product determined?

The selling prices of pharmaceutical products in the internal market are determined by the competent Office of the General Secretariat of Commerce, after conducting research in the countries - members of the European Union (EU) in which the pharmaceutical product is already marketed by taking into account the selling price to the wholesaler. The prices of pharmaceutical products are determined for the packages that are approved by the National Drugs Organization (EOF) and the European Medicines Agency (EMEA) and results from the average of the three (3) lowest corresponding prices of the pharmaceutical product in the EU members-states, in which there exist official data which are announced by the competent authorities of those countries (Ministerial Decision 66084/2011 and Market Decree 7/2009). The price of the pharmaceutical products for which their patent has expired cannot exceed 70% of the price that the same pharmaceutical product had while the patent was still valid. The EU countries, for which official data exist, are announced through the 1st Price Bulletin of each year. According to Article 36 of Law 4025/2011, for the inclusion of a pharmaceutical product in the positive list of prescription only medicines, the pharmaceutical companies or marketing authorization holders must pay (a) an one off entry fee in said list per pharmaceutical product and (b) the corresponding rebate amount per pharmaceutical product for each year. Failure to pay said amounts will result to the exclusion of the product from the positive list of prescription only medicines.

FOOD SUPPLEMENTS

What rules govern the sale of food supplements?

According to Article 2 of Ministerial Decision 127962/03/2004 which implemented into the Greek law the European Directive 2002/46/EC "on food supplements", food supplements are concentrated sources of vitamins, metals, minerals and/or other substances (such as amino acids, essential fatty acids, fiber and various plant extracts), which are sold in the form of tablets, pills or any other form. Said Ministerial Decision provides that the import, sale or free supply of food supplements which is not consistent with its provisions, are prohibited. Thus, the law imposes rules both as to the possible components of food supplements (e.g. provides tables of vitamins and minerals) and also as to their presentation, marketing, nutritional labeling and advertising. According to Article 6 the labeling, presentation and advertising of food supplements must not attach to these products properties equal to the prevention, treatment or cure of a
human disease nor mention any such properties. Moreover, the producer or circulator of food supplements must notify the EOF of said circulation of the products in the market, who in turn will decide whether said circulation may or may not continue (Article 10). It is worth noting, that the sale of food supplements to the general public can only be made by pharmacies.

VACCINES

Are vaccines treated in a different way than other pharmaceutical products under Greek law?

Vaccines are treated under Greek law not as a distinctive category, but rather in the same way as other pharmaceutical products for human use. However, vaccines might also be addressed as either a special measure in cases of imminent threat to the public health (e.g. flu pandemic), or as part of each year’s Vaccination Plan which is issued by the Ministry of Health. According to Article 6 par. 2 L.1316/1983 it falls within EOF’s competency to secure protection of the public health where the national interest demands it and therefore to provide the relevant guidance, on a case by case basis, with regards to the supply and provision of vaccines to the public. The Institution of Pharmaceutical Research and Technology (IFET) has also the competency to order and supply vaccines, whether this is requested by a patient, a hospital or other public and/or private clinic or pharmacy, in cases where said vaccine is not available in Greece.

MEDICAL EQUIPMENT

What is the basic legal framework regarding medical devices?

Greek Joint Ministerial Decision 130648/2009 “on medical equipment” which has implemented the EU Directive 93/42/EC (as amended and in force) is based on a new approach in matters of technical harmonization and standardization and therefore provides for some basic requirements with regards to medical devices. In order for medical devices to bear the necessary marking “CE”, they must meet specific requirements for each product type. When a medical device is covered by other Directives concerning other aspects (e.g. the Low Voltage Directive, Machinery Directive etc.) and which also provide for the existence of the marking “CE” in the product, then the latter shall indicate that the medical device meets also the requirements of these Directives respectively. The Directive 93/42/EEC lays down, inter alia, the obligations of the manufacturer (or authorized representative) which in this case is the natural or legal person responsible for the design, production or manufacture, packaging and labeling of the medical device, so that the product will be marketed under his name, regardless of whether these operations are carried out by the same person or a third party on his behalf. The obligations of manufacturers apply also to the natural or legal person who assembles, packages, processes, fully refurbishes and/or labels one or more, already developed products, and/or intends that these products are marketed in his name (Own Brand Labeling). The classification of each medical device is made according to its intended purpose and mode of action. According to Article 9 of Directive 93/42/EEC, the medical devices are divided into categories to distinguish between the risks associated with many different medical devices covered by the Directive.
INTERACTIONS WITH HEALTH CARE PROFESSIONALS (HCPs)

What incentives may be given to HCPs by pharma companies?

According to national laws and regulations (including the Code of Ethics of the Hellenic Association of Pharmaceutical Companies (SFEE) and EOF’s Circulars), gifts of any kind are strictly prohibited and should not be offered or promised when their purpose is to induce or are in exchange for past or future sales, recommendations and/or use of the company’s products. Gifts to HCPs will only be permitted if they are inexpensive in amount and infrequently provided. As a principle, gifts, even of modest value, should not be given in the form of cash or cash equivalents. Hospitality can be offered to HCPs in the context of scientific and/or educational events, but the following rules must be observed:

- All forms of hospitality must be reasonable in amount, of secondary importance to the purpose of the scientific event, must never be linked to purchasing, recommending or using the company’s products; must never be extended in exchange for securing sales, recommendation or use of the company’s products; must not be extended to other non-related persons such as friends, spouses or children.
- Venues for hospitality should be suitable for the main purpose of the event. The surroundings have to be considered to be conducive to business discussion.

CLINICAL TRIALS

Approval of interventional clinical trials and Good Clinical Practice

Ministerial Decision 89292/2004 (which has implemented in Greece the Directive 2001/20/EC “on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use”) incorporated specialized provisions with regards to the conduct of clinical trials to human beings, and especially as regards to the application of good clinical practice.

Good clinical practice is a set of internationally recognized ethical and scientific quality requirements which must be observed for designing, conducting, recording and reporting clinical trials that involve the participation of human subjects. Compliance with this good practice provides assurance that the rights, safety and well-being of trial subjects are protected, and that the results of the clinical trials are credible. The principles of good clinical practice and detailed guidelines in line with those principles shall be adopted and, if necessary, revised to take account of technical and scientific progress.

For the realization of clinical trials the prior written approval of the National Ethics Committee (NEC) also needs to be obtained. NEC’s written approval must be given within a period of 60 days, at the most, following the relevant application and submission of the completed file.

NEC is an independent body, consisting of healthcare professionals and nonmedical members, whose responsibility is to protect the rights, safety and wellbeing of human subjects involved in a trial and to provide public assurance of that protection, by, among other things, expressing an opinion on the trial protocol, the suitability of the investigators and the adequacy of facilities, and on the methods and documents to be
used to inform trial subjects and obtain their informed consent. Parts of the process of approval are also the Scientific Boards and Administrations of the Health Region Administrations (“YPE”) of the relative hospitals, which have the obligation, within 30 days from the application and submission of the completed file, to inform NEC with regards to any problems as to the adequacy of the investigator and sub investigators and the suitability of the hospital’s facilities where the clinical trial is to take place.

In the context of said legislation and in order to ensure good clinical practice, two databases are also in operation; namely Eudract (European Clinical Trials Database) and Eudravigilance. Eudract is a database in which the sponsor inputs basic data of the clinical trial, so as to ensure transparency as to the conduct of clinical trials and control of the data that result there from and are to be published. The Eudravigilance database has been created so as to allow electronic report of serious adverse events that may become apparent during the trial.

SUPPLY OF PUBLIC HOSPITALS AND OF PHARMACIES

Supply of public hospitals

Ministerial Decision 14801/2011 provides that medicines, medical equipment and other products shall be supplied to public hospitals by virtue of supply agreements (Article 10 Law 3580/2007) which are supervised by the Supply Committee of the Ministry of Health. Also, the same Law foresees the possibility of conducting tenders for the supply of pharmaceutical products on the basis of the substance of the same pharmacological category.

From January 1, 2012 the provisions of Law 3918/2011 shall come into force, according to which, supply agreements with public hospitals (either for products or services) shall be the subject of the Plan of the Program for Supplies and Services of the relevant Health Districts (YPE). Health Districts (or in some cases the hospitals themselves according to par.9 Article 1 L.3918/2011) shall be competent for: a) the announcement and conduct of tenders, b) the approval of the result of the tender or its cancellation, c) the execution of supply agreements, d) the monitoring of the actual execution of the supply agreements, e) the fundraising for the timely settlement of the obligations arising out of the Program for Supplies and Services, and f) the settlement of the amounts due.

Supply of pharmacies

According to the provisions of Article 331 (paragraph 4) of Market Decree 7/2009 as amended and currently in force (following extensive amendments that took place in 2011) “the producers, packers or importers [of pharmaceutical products] sell the products falling under the provisions of Article 12 of L. 3816/2010 (exclusively hospital use products) to the private pharmacies and the wholesalers at the hospital price, which is the wholesaler’s price decreased by a percentage of 13%”. Moreover, according to the provisions of Article 333 of the above mentioned Market Decree, “producers, packers and importers [of pharmaceutical products] may offer discounts only on the hospital price [of the product] and only to the following entities: The Public, State Hospitals, Social Care Units of Article 37 of L.3918/2011, IKA pharmacies and pharmacies of private clinics with a capacity of over 60 beds”.

Kyriakides Georgopoulos & Daniolos Issaias 601
As regards to the rest of the products, i.e. non hospital use products sold either with or without medical prescription, according to the provisions of Article 2 of Presidential Decree 194/1995 producers, representatives and importers of pharmaceutical products may sell the products directly to pharmacies at the wholesale price (which is the sale price to pharmacies and includes the wholesaler’s profit) provided they hold a wholesale license, which is granted pursuant to the provisions of said P.D.

PARALLEL TRADING OF PHARMACEUTICAL PRODUCTS

Is parallel trading of pharmaceutical products allowed in Greece?

According to Article 15 of Law 3580/2007, the holders of a wholesale license of pharmaceutical products that are marketed in Greece must secure the appropriate and continuous supply of the market with said pharmaceutical products so as to cover the needs of the patients in Greece. As soon as the needs of the Greek market are met, said holders of a wholesale license may export pharmaceutical products, only in cases where these products have been supplied to them directly by the pharmaceutical companies. For the monitoring of the sufficiency of the market in pharmaceutical products, the relevant supply documents need to be kept on record for at least two (2) years and be available for inspection at any time.

The holders of a wholesale license that export pharmaceutical products in EU countries sell them directly and only to persons that hold a license to sell pharmaceutical products according to the laws of said country. The pharmaceutical products that are exported must have obtained a marketing authorization license in the destination country by their importer and likewise, pharmaceutical products that are exported to third countries, outside the EU, must have the EOF’s approval and must be exported by their manufacturer. In order to ensure that the exported pharmaceutical products are genuine, the wholesalers that proceed to exports must not intermediate any exports by other wholesalers.

INTERNET

Are there any special rules governing the content of websites of pharmaceutical companies?

With regards to the contents of a website of a pharmaceutical company the following must be observed:

(a) The information included in the site must be regularly updated with new facts and must clearly display for each page and/or item, the most recent date as of which such information was updated.

(b) Examples of the information that may be included in a single site or in multiple sites are:

(i) general information on the company. Sites may contain information that would be of interest to researchers, the news media and the general public, including financial data, descriptions of regulatory developments affecting the company and the authorization/ marketing of its products, information for prospective employees, etc.

(ii) health education information. Sites may contain information about health issues which do not constitute promotion with respect to the characteristics of diseases, methods of prevention and treatments, as well as other information intended to...
promote public health. They may refer to medicinal products, provided that the discussion is balanced and accurate. Relevant information may be given about alternative treatments, including, where appropriate, surgery, diet, behavioral change and other interventions that do not require use of medicinal products. Sites containing health education information must always advise people to consult an HCP for further information.

(iii) information that according to the applicable laws is only intended for HCPs. Any information in sites directed to HCPs that constitutes advertising must comply with the applicable legislation governing the practice, content and format of advertisements for prescription only medicinal products (Article 30 of the SFEE Code of Ethics)

(iv) non promotional information for patients and the general public. Sites may include non promotional information for patients and the general public on products distributed by the company (including information on their indications, adverse reactions, interactions with other medicinal products, proper use, reports of clinical research, etc.), provided that such information is balanced, accurate and consistent with the approved summary of product characteristics (SPC). Brand names should be accompanied by international generic names. The site may include links to other web sites containing reliable information on medicinal products, including sites maintained by government authorities, medical research bodies, patient organizations, etc.

In April 2006, two long established and well known Greek Law Firms, Kyriakides Georgopoulos Law Firm (1933) and Daniolos Issaias & Partners Law Firm (1923), (the latter specializing mainly in Maritime Law), decided to merge to form Greece’s largest Multidisciplinary Law Firm, competent to cover the needs of their respective clients in all fields of legal practice.
CONSUMER PROTECTION
What is the general legislative framework of consumer protection in Greece?

Law 2251/1994 on the Protection of Consumers as amended by Ministerial Decision YA Z1-629/2005 and Law 3587/2007 (the “Law”), is the core law for consumer protection in Greece. It regulates various related consumer issues such as general terms and conditions of consumer contracts, unfair contract terms, distance selling, doorstep selling, misleading and comparative advertising, distance marketing of consumer financial services, product liability etc. Except from the aforementioned Law, the following acts need to be mentioned in order to supplement the legislative regime as regards consumer protection in Greece. In particular:

- Law 3862/2010 as amended by Law 4002/2011 for the implementation of the Payments Service Directive;
- Ministerial Decision Z1-798/2008 as amended-clarified by Ministerial Decisions Z1-21/17.01.2011 and Z1-74/2011 concerning the prohibition of General Terms and Conditions which have been held unfair by court decisions on consumer class actions;
- Law 3869/2010 concerning debt settlement of highly indebted consumers and other rules as amended by Law 3996/2011;
- Joint Ministerial Decision Z1-404/14.6.2001 for the indication of prices of products offered to consumers;
- Presidential Decree 339/5.9.1996 on the package travel;
- EC Regulation 261/2004 of the European Parliament of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights;
- Joint Ministerial Decision Z3-2810/2004 for general product safety; and
- Ministerial Decision Z1-1262/2007 concerning terms on consumer contracts with slimming centers and gyms.

Who may be deemed as a consumer for the purposes of application of the Greek Consumer Protection Law?

The Law has transposed Council Directive 93/13 EEC of April 1993 on Unfair Terms in Consumer Contracts into Greek Law. Whilst article 2(b) of this Directive defines consumer as any natural person who is acting for purposes which are outside his/her business, trade or profession, the Law has adopted a wider definition of what constitutes a consumer thus rendering the Law broader in scope. More specifically, pursuant to article 1(4)(a) of the Law, a consumer is a person for whom the products and services offered in the market are intended, or the person who uses such products or services, as long as this person is the final recipient thereof. Thus, this definition is wider since:
It is not restricted only in persons acting for purposes outside their business, trade or profession as long as such persons are the final recipients of the product or the service intended; and

Legal entities also fall within its scope.

Despite the aforementioned wide definition, it should be mentioned that in subsequent consumer law acts, the Greek legislator has adopted the European narrow consumer definition; in particular:

- In article 4a of Law regarding distance selling in the field of financial services which has been added through Ministerial Decision YA Z1-629/2005 implementing Directive 2002/65/EC on the distance marketing of consumer financial services;
- In articles 9a ff. of the same Law regarding unfair commercial practices added through the Directive 2005/29/EC on Unfair Commercial Practices;
- Joint Ministerial Decision Z1-699/2010 on credit agreements for consumers implementing Directive 2008/48/EC on credit agreements for consumers; and

How are the General Terms and Conditions defined under the Law?

Pursuant to article 2(1) of the Law, the General Terms and Conditions (the “GTCs”) are those terms that have not been individually negotiated and have been drafted by the trader in advance for use in future contracts, thus not allowing the consumer to influence the substance of the terms. It has to be noted that salient terms, such as those determining the price, are not meant to be GTCs. The GTCs are usually found in the context of a pre-formulated standard contract. Article 2(6) of the Law renders GTCs as unfair and consequently void if they cause, a significant imbalance to the parties’ rights and obligations arising under the contract to the detriment of the consumer. The unfairness of a GTC is assessed, by taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all other terms of the contract or of another contract on which it is dependent. In addition, except for the general rule in article 2(6), which determines the criteria for the characterisation of a GTC as unfair, article 2(7) of the Law, entails an indicative, non-exclusive list of thirty-two terms, which are per se unfair. Moreover, article 2(2) of the Law mentions that GTCs, which are entailed in consumer contracts concluded in Greece, should be drafted in Greek language in a plain and intelligible way. The use of Greek language is also mandatory in cases where GTCs are incorporated in international transactions which take place within the Greek market.

Does the Law entail any specific provisions on consumer protection when doorstep and distance selling take place?

Articles 3 and 4 of the Law set out specific provisions in relation to doorstep and distance selling respectively. In particular, in terms of contracts negotiated away business premises, article 3 includes a list of obligations that the trader is required to comply with (e.g. such transactions should be made in writing and include certain details as set out in detail in article 3). Regarding distance selling contracts, the consumer should be provided with certain information prior to the conclusion of such contract (e.g. the identity of the supplier, the main characteristics of the goods or services, delivery costs, the price of goods or services including all taxes, withdrawal rights etc). Moreover, the same article prohibits inertia selling, namely the offering of goods or services to the consumer without being ordered and involving at the same time a demand for payment.
Does the Law provide for any rules as regards distance marketing of financial services?

Article 4a of the Law regulates distance marketing of financial services, namely any service of a banking, credit, insurance, personal pension, investment or payment nature. Application of article 4a of the Law requires that a contract is concluded between a consumer and a financial services supplier, that is, any person, whether public or private, who provides financial services in his/her commercial practices provided however that the parties were not in any physical contact during the preliminary and signing stages of the contract. Both persons must have communicated only by using an organised distance sales or service provision scheme (e.g. telephone, facsimile, courier) run by the supplier.

As a result, if such conditions are met, the supplier is obliged to provide to the consumer certain information on paper or other durable medium that deals with:

- The supplier (i.e. identity, address, registration information, supervision authority);
- The financial service (i.e. description of the main characteristics, total price and costs, special risks etc);
- The distance contract (i.e. early termination, minimum duration, applicable law and withdrawal rights); and
- The redress.

Such information is provided reasonably, before the time the consumer becomes bound by the offer or contract. Exceptionally, the Law allows the supplier to provide information to the consumer after the execution of the contract when, at the consumer’s request, the contract has been executed using a means of distance communication which does not enable the provision of information as required by Law. Finally, article 4a enables the consumers to withdraw from the contract without penalty and without giving any reason during a period of 30 calendar days in the case of life insurance, or 14 calendar days in the case of any other financial products. Upon the exercise of the right of withdrawal and expect for insurance contracts, where the consumer shall not be charged any amount, the consumer may only be required to pay for the service actually provided by the supplier with the consumer’s approval.

Who bears responsibility for product liability and under which circumstances such liability occurs?

Product liability issues arising from the sale of products is regulated by the provisions of articles 534-552 of the Greek Civil Code as amended by Law 3043/2002 which was introduced for the harmonisation of the national legislation to Directive 44/1999/EC for consumer products. Further, article 6(1)(a) of the Law sets out that the producer of the defective product is held liable for damages incurred to the consumer. Moreover, if the identity of the producer is unknown to the consumer, the latter may still claim compensation as the same liability is also extended to the importer and the supplier of the defective product. This is because the Law deems both the importer and the supplier as producers. The claimant does not have the onus of proving the existence of fault because the test for determining product liability is an objective one. Therefore, since the burden of proving dishonesty or fault on behalf of the importer or supplier is no longer a requirement, the consumer can still claim against defective products if the following three conditions are met:

(i) The defect exists at the time of sale, namely at the moment when the product has been launched in the market;
(ii) The consumer has suffered damages; and
(iii) There is casual link between the damage the consumer suffered and the defect in the product.
Does the Greek legislator provide a specific legislative framework on consumer credit agreements?
Ministerial Decision Z1-699/2010 transposed Directive 2008/48/EC on credit agreements for consumers into Greek law and applies generally to credit agreements below €75,000 entered into with natural persons for non-business purposes subject to certain exceptions. This new regime regulates among others the following issues:

- It includes certain standard information that should be depicted in the advertisement when the latter gives an indication of an interest rate or other figures relating to the cost of credit;
- It cites a comprehensible set of pre-contractual information that must be provided to a borrower in “good time,” i.e. before the borrower becomes bound by the agreement. The information, which is set out in article 5, must be disclosed in a format known as the Standard European Consumer Credit Information sheet (“SECCI”);
- It requires certain information, which is similar to the pre-contractual requirements, to be contained in the credit agreement itself although the manner in which the information must be presented is less prescriptive than the SECCI;
- The lenders are required to provide “adequate explanations” to borrowers before the agreement is concluded so as to enable the borrower to assess whether the loan is adapted to his/her needs and financial situation;
- The lenders are required to assess the creditworthiness of the borrower based on information obtained from the borrower or by consulting a credit reference agency before the conclusion of a credit agreement and before any significant increase in the total amount of credit under an existing agreement; and
- It contains specific provisions in relation to overdrafts and overrunning.

Which court actions are available to enforce the Law?
A court action can be initiated before the Civil Courts by a consumer or/and a consumer association. Pursuant to article 10(16) of the Law, a class action can be filed only by consumer associations that have more than 500 members and have been registered in the consumer association’s public registrar for over than one year. In the latter case the Multi-Member Court of First Instance of the place of residence of the defendant has jurisdiction.

What are the possible civil sanctions and remedies in case of infringement of the Law?
Pursuant to article 9(i) of the Law, a consumer may initiate court action for the following remedies:

- Pecuniary and non-pecuniary damages;
- The termination of an unfair commercial practice and its impediment from being repeated in the future; and
- The publication of a court decision ordering the termination of an unfair commercial practice, as well as, of a recovery statement by the offender.

As regards class actions filed by consumer associations, article 10(16) provides that such associations are entitled to ask for the following remedies:

- The termination of an unfair commercial practice even if it has not taken place yet;
- The publication of a court decision ordering the termination of an unfair commercial practice, as well as, of a recovery statement by the offender;
- The commitment, the withdrawal or the destruction of defective products that may harm the security or/and health of the consumers;
- Non-pecuniary damages;
- The issuance of injunctions that aim to secure the claims of the consumers as regards the deterrence of unfair practices or the damages until the issuance of a final court decision; and
- The recognition of the restitutionary damages in favor of consumers.

**What are the possible criminal sanctions for the infringement of the Law?**

There are no direct provisions for criminal sanctions in the Law. However, there are other Greek laws that provide for criminal sanctions in specific cases of unfair trade practices (e.g. Law 146/14 against Unfair Competition). Also criminal sanctions can be imposed pursuant to the provisions of the Greek Penal Code.

**Are there any mediating services that deal with aspects of the Law?**

In Greece there are several mediating services related to consumer protection. In particular, the following mediating services should be mentioned:

- The Ombudsman of the Consumer which operates as an Independent Administrative Body and acts as an alternative dispute resolution body;
- The Amicable Settlement Committees that function in each Prefecture in Greece under the auspices of the Ombudsman of the Consumer. Pursuant to article 11 of the Law, their role is to enable the amicable settlement of disputes between consumers and suppliers. However, the committee findings neither have the effect of a court ruling nor they are enforceable; and
- The Hellenic Ombudsman for Banking-Investment Services which deals, among other things, with the unfair trade practices of banking (such as deposits, loans, cards) and investment services (such as shares, mutual funds, bonds) towards consumers.
PERSONAL DATA
What is personal data?
Any piece of information relating to an identified or identifiable individual. Information relating to entities does not qualify as personal data. Statistics including data relating to individuals do not qualify as personal data, provided that they are truly anonymised, i.e. that the individuals are not identifiable.

What is sensitive personal data?
Any piece of information concerning racial or national origin, political ideology, religious or philosophical beliefs, participation in labor or trade unions, health condition, social care, sexual life, criminal charges and sanctions, participation in groups of people involved in the above matters.

Which acts fall within the term “processing of personal data”? Which business activities are really affected by the legislation re personal data protection?
Any operation performed upon personal data such as collecting, recording, storing, modifying etc. qualifies as “processing of personal data”. Thus, it is obvious that personal data issues may arise in all business activities and in all aspects of life in general, since information about identified and / or identifiable individuals are almost everywhere found.

Is there any special law re personal data protection in Greece?
Data protection in Greece is basically provided for by Law 2472/1997, which harmonized the Greek legislation with Directive 95/46/EC. This Law institutes a set of obligations for those ones who process personal data and respective rights of the people to whom the data processed relate. The same Law does also provide for the establishment of the Hellenic Data Protection Authority.
It should be noted however that certain cases of personal data processing remain outside the scope of the above Law, such as: any acts done upon personal data by an individual within the framework of his / her own activities exclusively; processing data within the framework of crime prosecuting (which is regulated by the procedural legislation) etc.
Additionally, when it comes to special cases of personal data processing, other laws may apply as well: e.g. Law 3471/2006 re personal data protection in the sector of electronic communications (vide Directive 2002/58/EC), Law 3917/2011 re the retention of data processed within the framework of public electronic communications (vide Directive 2006/24/EC), article 34 of Law 4002/2011 re the processing of personal data conducted
by the Gaming Supervision & Control Commission within the framework of the Gaming Market regulations etc.

**Are there any other regulations, guidelines etc. re personal data processing?**

Yes. By virtue of Law 2472/1997, the Hellenic Data Protection Authority (HDPA) is entitled to issue circulars, directives, regulatory acts etc. in order to interpret provisions of the said Law or even institute special regulations for specific cases of personal data processing. Amongst others, the HDPA has issued the circulars/acts no. 1/1999 concerning the controller’s obligation to inform the data subjects, no. 1122/2000 concerning the operation of CCTV systems, no. 115/2001 concerning personal data processing within the context of employment relations, no. 1/2005 concerning the secure destruction of personal data etc. It is noted that the Credit Profile Database and the Risk Consolidation System operated by TIRESIAS SA (which is an inter-banking entity) is also subject to the regulations issued by HDPA through various decisions and normative acts.

**Which are the parties involved in personal data processing?**

The “controller” which is the natural or legal person, public authority, agency or any other party which (alone or jointly with others) determines the purposes and means of the processing of personal data.

The “processor”, i.e. any natural or legal person, public authority, agency or any other party which processes personal data on behalf of the controller. The processor is, so to say, an independent party which does not belong to the organization of the controller, but only follows its instructions. Thus, for instance, the HR manager of a company is not a processor but he / she simply acts as a representative of the controller. On the other hand, a third accounting company offering payroll management services to the controller qualifies as a processor at Law. It is noted that a written agreement between the controller and the processor is always necessary; it shall inter alia include the rights & obligations of the processor, confidentiality clauses etc.

The “data subject”. i.e. the individual to whom data relates.

The “third parties”, i.e. the parties other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data.

The “recipient”. i.e. any party to whom data are disclosed, whether a third party or not.

**Which are the conditions for lawfully processing of personal data?**

(a) Observing the general principle of proportionality (i.e. data must i. be collected fairly and lawfully for specific, explicit and legitimate purposes and it must be fairly and lawfully processed, ii. be adequate, relevant and not excessive in relation to the purposes for which they are processed, iii. be accurate and, where necessary, kept up to date, iv. be kept in a form which allows the identification of data subjects for no longer than the period required given the purposes for which such data were collected or processed).

(b) Obtaining the consent of the data subject.
(c) Notifying to or (when it comes to sensitive personal data) obtaining a permit from the HDPA. A permit to process sensitive personal data is granted if the data subject has given its consent thereto, or in other cases restrictively provided for at Law. It is noted that one of such cases referring to the sensitive personal data processing of public figures for journalistic purposes has been considered by HDPA to be contrary to the freedom of Press and thus inapplicable. HDPA invokes respectively the case law of the European Court of Human Rights regarding the function of journalists as “public watchdogs” and comes to the conclusion that no permit is necessary in such cases (vide amongst others HDPA decisions no. 17/2008, 43/2007, 26/2007, 53/2004).

(d) Informing the data subject whenever personal data is collected.

Are there any exemptions from the above conditions?

The basic exemptions provided for in the Law refer to the data subject’s consent and the notification / permit of the HDPA. More specifically:

(a) No consent on the side of the data subject is necessary amongst others when processing is necessary for the operation of a contractual relation to which the data subject is a contracting party; for the compliance with a legal obligation to which the Controller is bound; for a legitimate interest pursued by the Controller or a third party provided that such legitimate interest evidently prevails over the rights and interests of the data subject etc.

Obviously, the above exemptions are of great importance, for instance for the smooth operation of any contractual relation of business life. However, all exemptions provided for at Law are very narrowly implemented by HDPA, especially when it comes to groups of “weak” individuals, such as consumers or employees. This approach of the HDPA (and Courts) is based inter alia on the phrasing of the above provisions of Law which seem to allow the exemption only when processing is necessary in such a context. What may be necessary or not is always judged ad hoc by the HDPA.

(b) No prior notification to the HDPA or permit granted by HDPA is necessary when processing is carried out exclusively for purposes relating directly to an employment relation; when processing relates to clients’ or suppliers’ personal data, provided that such data are neither transferred nor disclosed to third parties etc. Reference should also be made to the above mentioned re processing within the framework of journalistic purposes.

Do the above exemptions allow to easily circumvent the law re the protection of personal data?

No. On the one hand such exemptions apply to the conditions of consent and prior notification / permit by HDPA only. The rest prerequisites for the legitimate processing of personal data do always apply.

On the other hand, such exemptions are very narrowly interpreted by HDPA as stated above. Thus, one could draw the rule “in dubio pro data subject” meaning that one should ensure the highest possible safeguarding of data subject’s rights except if the Law explicitly allows certain exemption.
Is there any additional condition when transferring personal data abroad?
First of all it should be clarified that transferring personal data qualifies as processing. Consequently, all the conditions referred to above apply to transferring personal data abroad as well. However, as far as the mere act of data's flow abroad is concerned, the Law furthermore provides for the following:
(a) Transferring personal data to EU countries is free.
(b) Transferring personal data to non-EU countries presupposes a special permit by HDPA except if (a) the Safe Harbor Principles are respected or (b) the EU Standard Contractual Clauses are applied.
In view of the above, it may be free (=not presupposing the HDPA's permit) to initiate the flow of data to an EU country or a third country after having signed a contract including the EU clauses; however, it may be not free to transfer the data to that third party which is located in EU (or elsewhere), if no notification to the HDPA has been done.

When does Greek Law apply?
What is of great importance when it comes to personal data processing within multinational organizations (e.g. involving controllers and processors located in more than one jurisdiction) is which national law shall apply. It is noted that in this aspect the Greek law is quite strict, since it goes further than the requirements of the Directive 95/46/EC (vide amongst others recital no. 18 thereof).
Article 3 para. 3 of the said Law 2472/1997 provides for that Greek law shall inter alia apply to any processing of personal data which is conducted either by a controller seated in the Greek territory or by a processor seated in the Greek territory. Thus, in case of a controller being located for example in Germany having a processor in Greece, processing would be subject both to the Laws of Germany (controller’s jurisdiction) and to the Greek law (processor’s jurisdiction).

Special cases of personal data processing: “whistleblowing” platforms / monitoring projects.
As explained above personal data protection requirements may appear in a plethora of cases of business life.
For instance, “whistleblowing” provided for in the US Sarbanes-Oxley Act as well as in the laws of other jurisdictions is highly connected to the processing of personal data of the people involved in the facts evidenced by the whistleblower etc. (vide Opinion no. 1/2006 of the Working Party of Article 29 Directive 95/46/EC). HDPA had the same view in a case referring to a whistleblowing platform operated by a Greek subsidiary of a multinational company and imposed various sanctions due to the infringement of obligations deriving from Law 2472/1997 (HDPA Decision no. 14/2008). Accordingly, personal data protection requirements frequently appear in case of monitoring projects and in general when it comes to internet & email usage policies implemented by companies within the framework of their relations with their personnel. Based on the various recommendations, decisions and other texts (issued by HDPA, Working Party of Article 29, International Labour Office etc.) one can draw the conclusion that: monitoring the internet and email usage of employees is not considered legitimate, unless the employer has taken all necessary measures in order to protect the employees'
privacy (e.g. by continuously warning them about such monitoring) and has offered them alternative means of communicating that are in no case monitored (e.g. by putting at their disposal shared computers with Internet connection outside the company’s network and monitoring system). In any case, it is forbidden to evaluate the employee’s performance using as a sole criterion the info automatically collected through monitoring equipment.

Are data subjects conferred specific rights at Law?

Data subject’s rights are the following ones: right to information; right to access; right to objection; and right to temporary judicial protection. However, exercising such rights may be restricted by Law in special cases of personal data processing. For instance, the right to access may not be exercised in case of processing in virtue of the Law 3691/2008 re anti-money laundering (vide HDPA decision no. 66/2008).

Does the Law provide for specific sanctions against any one processing personal data not in conformity with its provisions?

The Law provides for administrative, criminal and civil sanctions in case of violation of the obligations concerning personal data processing. HDPA may impose on the controller and / or its representatives the following sanctions:
(a) warning along with setting a deadline for ceasing the violation,
(b) fine amounting from 880 to 150,000.00 Euro
(c) temporary revocation of the permit,
(d) permanent revocation of the permit,
(e) destruction of the data collected, cessation of processing and destruction, returning or seizure of the relevant data.

The choice of the appropriate sanction -and of its extent- resides in HDPA’s absolute discretion; however, law provides that the sanction has to be proportionate with the violation occurred: Conseil d’ Etat 2252/2005 judged that a fine amounting to 60,000,00 Euros for a simple violation of personal financial data was proportional in view of the financial position of the controller (it was about a creditability controlling company). Furthermore, the following criminal sanctions apply for persons violating the Law 2472/1997:
(a) Violation of articles 6 and 7 para. 3 (notification of processing or applying for a permit to process) entails imprisonment of up to 3 years and pecuniary (criminal) penalty amounting from 3,000 Euro to 15,000 Euro.
(b) Maintaining sensitive personal data (as a file) in violation of provisions of article 7 (processing sensitive personal data), entails imprisonment of up to 5 years and pecuniary (criminal) penalty amounting from 3,000 Euro to 15,000 Euro.
(c) In general, processing personal data in an illegal way, entails imprisonment of up to 5 years and pecuniary (criminal) penalty amounting up to 30,000.00 Euro.

Similar sanctions are also provided for in more special cases, as for example not complying with HDPA’s decisions etc.
Article 23, re civil liability provides for that whoever suffers damage due to violation of Law 2472/1997 is entitled to compensation by the wrongdoer, including direct damage, indirect or consequential losses (e.g. loss of profit) and moral damages as well. The above provision introduces a minimum of compensation amounting to 6,000.00 Euro for cases of violation of data protection legislation that led to moral damages.
LOTTERY – GAMES
What is in force concerning the Lottery in Greece?
Under the privatization program of the Law 3985/2011 “Medium Term Financial Strategy Framework 2012-2015” decision 187/2011 (Official Gazette B 2061/16.09.2011), as applicable, the Interministerial Committee on Restructuring and Privatization and by the October 24, 2011 decision of the board of directors, the company called “Fund for the Development of Private Property of the State SA”, which is owned 100% by the Greek government, decided to transfer the right to exclusive production, operation, traffic, marketing and overall management of the Greek Lottery.
The transfer of the Right will be made by the Fund for a period of 12 years through a contract granting the License. Any period of leave will begin by the end of the transitional period provided for in licensing agreements. The Special Purpose Company shall have the sole purpose of the exclusive production, operation, traffic, marketing and overall management of the Greek Lottery pursuant to the terms and conditions of licensing agreements, the Greek general legislative and regulatory framework, as well as more specific regulatory framework of the Greek Lottery.

Which law regulates gambling?
A key piece of legislation is Law 4002/2011 and specifically Articles 25-54, which were passed in accordance with the relevant EU directives. The provisions of this Act apply to the technical sub-entertainment “of the case a of Article 25 and gambling, conducted or that which has already authorized the entry into force of this Act, in casinos and the companies OPAP SA and O.D.I.E. SA, for which special provisions are applied.

Which is the scope of implementation of Law 4002/2011?
The Law 4002/2011 applies to “electronic games” and for Lucky Games carried out with slot machines or via the internet.
However, the Law 4002/2001 does not apply to gaming conducted, or that which has already authorized the entry into force of this Act, in casinos and the companies OPAP SA and O.D.I.E. SA. Therefore, the Law 4002/2011 does not apply to “Games Betting fixed and variable efficiency” (Law 2433/1996), “BINGO LOTTO”, “Kino”, Numerical 5 BY 35”, “Super 3” and “Super 4” (Article 27 of Law 2843/2000).

What is defined by the Law as “Lucky Games”?
According to Article 25 of Law 4002/2011, such games are defined out those of which the outcome depends at least partly by chance, which gives the player a monetary benefit. Within the realm of gambling are also considered the technical-entertaining
games that take the form of lucky games, as a result of which a bet is placed between any persons, or in which the end result can bring economic benefit of any kind to the player. The category of lucky games are integrated and all those which are classified as “mixed games” or “gambling”, are in accordance with the provisions of Royal Decree 29/1971, subject to the entry into force of this Act. A game of chance is the Bet.

What is defined as “Bet”?

“Bet” is a game of chance that involves a provision for events of all kinds, from a number of individuals, provided that the profits of each player are determined by the organizer of the bet, before or during game, with reference both to the amount that every player paid to participate in the bet, and at the specified rate of return on the bet.

What are the differences between Lucky Games as opposed to Technical - Entertainment games?

“Technical-entertainment” is the chance whose outcome depends solely or primarily on the skill and mental abilities of the player and performed in public for recreational purposes, without allowing for the outcome of the bet concluded between any persons or given any form of financial benefit to the player. The technical, recreational games, do have a system for calculating, recording and yield economic benefits to the player. The Technical-Entertainment games are not allowed to supply the player with any form of monetary gain.

The technical- recreational games, according to their purpose, are divided into: aa) “gaming machines”: in which to operate them requires only mechanical means and the exertion of physical force by the player. b) “Electromechanical games”: in which the operation requires electrical or electronic support mechanisms. c) “Electronic gaming”: that when to operate, apart from the supporting electronics and other mechanisms requires, electronic assistive devices (hardware), and the existence and implementation of software - the program (software) games, which is incorporated or installed which contains all the information, instructions and other data relating to use and execution of the game.

Which authority is responsible for issuing licenses?

The Commission on Monitoring and Control of Lucky Games under Article 16 of Law 3229/2004 (A 38), which was renamed E.E.E.P., is the authority responsible for issuing licenses, certifications, supervision and monitoring progress and holding games.

What are the responsibilities of E.E.E.P.?

The E.E.E.P. exercise its powers under Article 17 of Law 3229/2004 and in those as laid down in Article 28 § 3 of Law 4002/2011, the most important of which are:

a) The supervision and control of the market: aa) technical - entertaining games with slot machines or via the internet, b) gaming with slot machines or via the Internet, c) forms of gaming that are not defined by other provisions or relevant supervisory authority, regardless of the means of implementing them.

b) To monitor and carry out the necessary inspections of participants in licensing competitions, concessionaires and those who operate gambling, to determine compliance with the terms hereof and their authorization.

c) power, characterization, classification and certification of each type of game or software thereof, and implementing or withdrawing the decision subject to a request
submitted by a manufacturer, supplier, distributor, licensee or trader in the premise where gambling will be installed and conducted.
d) The issue of regulatory decisions to protect minors and generally vulnerable groups and to implement specific measures for the prevention and enforcement, banning games with racist, xenophobic, pornographic contents or that which is contrary to public order.
e) issuing regulatory decisions addressed to holders of permits in order to implement measures to prevent and deter money laundering.
f) The imposition of statutory sanctions of the law including the temporary or permanent withdraw of licenses to perform gambling, without this being a hindrance to other penalties set by other legislation.

How can one carry out and exploit games with slot machines or online?
To conduct and operate games of slot machines or via the Internet requires the prior granting of an administrative permit pursuant to the provisions of Law 4002/2011. Third non-permit holders may exceptionally operate and operate gambling with slot machines, as set out in paragraph 6 of Article 39. Gambling and slot machines must be certified in accordance with the provisions of the Act.

Is the above exclusivity in line with European legislation?
In principle, the European Court upheld the monopoly on gambling on the grounds that each state-member of the EU has the right to grant monopoly rights, gaming (even online) to a specific company, in order to ensure the safety and consumer protection against crime and the dangers of games.

What is, and what is implemented by, the Governing Body E.E.E.P. and the Rules of Operation and Control Games?
According to Article 29 of Law 4002/2011, under presidential decrees which are issued with the proposal of the Minister of Finance, upon the original proposal of E.E.E.P., adopted by the Agency of E.E.E.P. and the Rules of Operation and Control Games. With the Organization of E.E.E.P., specific issues of its responsibilities are addressed, along with the allocation of staff and all other matters relating to its structure and organization.
With the Regulation and Control Operation Games issues on gambling are addressed, and in particular:
a) The conditions of certification and registration in their register of manufacturers, importers and games of skill and slot machines, and the upkeep of these registers.
b) The specific procedure for issuing licenses and monitoring procedures, auditing, compliance with the terms of licenses and obligations hereof by the holders of licenses.
c) The certification process, its duration, and the enrollment in their registers of shops, slot machines, games or websites to conduct gaming, and the keeping of these registers.
d) The rules relating to responsible gambling licensees, who operate games, providers, players, financial institutions, owners of shops, internet service providers (ISPs), advertisers and everyone involved in the process.
e) How information providers inter-network (ISPs) from E.E.E.P to ensure the block of unlicensed gaming sites conducted online by users.
f) The operating conditions and specifications of the servers and software games for the license holders and those who operate gambling, on either slot machines or via the Internet, and the frequency and the exact content of the data sent to E.E.E.P.
g) The procedures for imposing sanctions, the mode assignment and escalation of sanctions under Article 51. In addition, the Regulation and Control of Gaming Operation regulating commercial communication games, the advertising of gambling, and in particular gambling and rules of conduct to govern activities.

What is in force regarding the licensing of gambling?

Greece is allowed to operate 35,000 slot machines. The Minister of Finance granted a license to OPAP SA in accordance with the provisions of Article 27 of Law 2843/2000 (A 219) for total of 35,000 slot machines. From this number, 16,500 were installed and operated by OPAP SA through agencies, and the remaining 18,500 were installed in unmingled locations, according to the requirements of Articles 42 and 43, and operated by concessionaires to whom OPAP grant the right of establishment and exploitation, as set out in paragraph 6. For the grant of license a payment is determined in accordance with the procedure as outlined in paragraph 9 of Article 27 of Law 2843/2000. The price for slot machines installed by OPAP SA and operated through their agencies is paid immediately upon the granting of the license. The license is valid for ten years, beginning twelve months after being granted.

What comprises a Personal Card Player?

In order to participate in games of chance conducted by slot machines or via the Internet, a player requires a personal card, with the aim of identifying factors such as age, Tax Identification Number, and to ensure additional restrictions set by the player himself. The individual player card may be issued by holders of permits in accordance with the procedure and conditions established by the decision of E.E.E.P. Prohibited to E.E.E.P., holders of the license and all operators is to conduct any gambling disclosure of the Personal Card Player. All the above relate to taking appropriate precautions so as not be able to identify players with technical or other means that can reasonably be used by third parties.

What is the process of licensing online gambling?

The conduct of gambling on the internet in Greece, comes under the exclusive jurisdiction of the State which operates through specially licensed providers. The E.E.E.P. determine the required operating conditions and specifications of the servers and software for the gaming license holders to conduct gambling on the internet, to ensure compliance with all provisions concerning the protection of players and the public interest.

The authorization to carry out gambling online has five (5) years tenure and includes conditions for which the activity was issued. No contractor can obtain more than one license. The licenses are personal and not transferable. Prohibited in any way is the leasing or pooling of marketing with others.

Some of the conditions imposed on the authorization may be incompatible with European legislation and / or the Constitution, as that of the sites which carry gambling
online with the mandatory name ending in «. Gr» (Article 47, paragraph 7), that the person who operates gaming websites mandatory exercises and the operation of these websites (article 48 paragraph 2) and that is prohibits the creation and operation of websites by non-permit holders (Article 48 paragraph 3), and places severe restrictions on Internet use but in addition because they lead to incongruous conclusions, as for example that the holder of the license should also be the page designer.

**Which are the consequences of operating without license or in violation of the license?**

The consequences consist in serious administrative penalties (heavy fines, the recovery of which is pursued according to the provisions of the Central Union of Municipalities [K.E.D.E.] the revocation of the license, the closure of the company) and also criminal penalties reaching imprisonment.

**Has law 4002/2011 been put into effect?**

The actual implementation of the Law has been hindered by the delay of the Ministry of Finance to enact the Advisory Committee on Gaming, which would be responsible for suggesting to E.E.E.P. the necessary measures for improving the functioning of the market and formulating opinions for regulatory decisions that E.E.E.P. is authorized to issue by the Laws 3229/2004 and 4002/2011. Furthermore, neither the Governing Body E.E.E.P., nor the Rules of Operation and Control Games have yet been established.
■ SPORTS LAW
How are the sports clubs (Société Anonyme, S.A.) inspected?

The sports clubs (SA) and the Divisions of Paid/ Professional Athletes of the relevant teams are supervised by the “Special Committee of Professional Sports”, having as a duty: a) the inspection for the compliance with the Sports Law provisions, b) the inspection for the fulfillment of the financial obligations of the sports clubs (S.A.) and c) the inspection of the subsidy being awarded by the General Secretariat of Sports to the relevant professional leagues.

Is there financial interest in Sport?

The field of professional sport is a subject of a great financial interest, which also appears in cases of amateur sport, due to their high publicity. Thus, an increased interest not only from a financial but also from a legal point of view is found on: a) sports clubs (S.A.), b) associations with divisions of paid/ professional athletes and c) the free transfer of players and coaches in the following fields:

- Contracts between athletes and sports associations or clubs. Salary issues arising from the labour contracts.
- Free transfer of athletes
- Service contracts and the financial benefits of athletes and coaches
- The television broadcasting rights of games, the contracts with clubs and the citizens’ rights to be informed
- Advertisements and financial relations between athletes and associations – clubs with the advertising companies
- The capital of sports clubs
- Exploitation of gyms – leasehold of sports facilities
- Tax issues – exemptions
- Sponsorship contracts

How is the sportsmanship protected?

A special legal framework regarding the sportsmanship has been implemented as specificity and interpretation of the rules of the Olympic Constitutional Charter, while a relevant institution for the resolution of the sportsmanship infringements has been established within the Greek Olympic Committee, which is called “Sportsmanship Committee” (Article 130 of Law 2725/1999 “concerning the professional and amateur sports”).

Which is the procedure for the establishment of a sports association?

According to Article 2 par. 1 of Law 2725/1999, at least twenty (20) people are required for the establishment of a sports association. Apart from the provisions of the Civil Code, which apply to all kinds of associations, there are certain kinds of associations governed by special laws, such as the professional associations, the trade unions, the nautical and sports associations.

What is the meaning of the “sports recognition”?

Following the Court’s decision approving the request for the association’s registration, it is required, so as the association be recognized as “sports”, to obtain “special sports recognition” and
“sportsmanship status”, throughout the decision of the Minister for Sport or other authorized by him body, central or regional (Article 8 of Law 2729/1999), following the decision of the Board of Directors of the association, on condition that the terms of law are fulfilled.

Who can join a sports association? Requirements?
According to the special provisions of the Sports Law, the number of the regular members in each sports association is unlimited. In the view of the Greek Civil Code, the Articles of Association may include a clause restricting the entry of new members (Article 86). It is a requirement for the registration as a member of the sports association and the exercising of the membership rights not to fall within the constraints posed by the Sports Law. The Law provides special cases in which the membership status is incompatible with other activities, while the member of the association is allowed neither work or have any other labour relation during the membership period nor represent the sports association (Article 3 of Law 2725/1999).

In which cases the members of the sports association lose their membership capacity?
According to Article 3 par. 7 of Law 2725/1999, any person falling within the above mentioned constraints, loses ex officio his capacity as a member.

Which are the terms of law under which the decisions of the General Assembly of the sports association shall be taken?
According to Article 101 of the Greek Civil Code, “Decision of the General Assembly is null and void, if it does not comply with the law or the Articles of Association”. The competent Court decides following the action filed by the member who did not consent or by anyone who has legal interest within a six (6) months deadline, starting from the issuance of the General Assembly’s decision. The same applies as regards to the decision of the Board of Directors of a sports association (see Decision no. 3725/2003 of the One-Member Court of First Instance of Athens, which declared the decision of the Board of Directors of a sports association null and void, because the relevant decision concerning the specification of the membership fees violates the principle of the equality of members, according to Article 2 par. 1 of Law 2725/1999, as it was amended by the provisions of Law 3057/2002 and the Article 136 par. 2 of the same law). In case such an action is filed, the Court, if requested, may allow the suspension of the challenged decision of the General Assembly, according to the provisions of Article 102 of the Civil Code.

Are the sponsorship contracts permitted?
The sports association has the right to contract with other natural persons or legal entities regarding sponsoring or advertising issues, under the conditions of the International Olympic Committee Regulations, so as to develop its sports activity. In this case, the concession of the use of the sports association’s trade name, trade mark and the relevant distinctive characteristics for purposes of advertisement and financial exploitation is not permitted (Articles 7 par. 4 of Law 2725/1999 and 2 par. 3 of Code of Accounting Books and Records).

Which is the legal nature of a sports federation?
The Greek sports federation is a part of a significant legal framework as a legal entity of private law, taking into account the constitutional provisions regarding the cultivation and development of sports, and, apart from administrative, it is also a legislative as well as disciplinary – judicial institution. The By-Laws consists the internal law of the association, meaning that the General Assembly shall not violate and decide against these terms (Lex Sportiva). The federation is under the supervision of the State, as it is provided by the law which puts it in a monopolistic and prevailing position (Articles 61 and 62 of the E.C. Treaty). The participation of the Sports Federation’s members in its bodies is regulated according to Article 24 par. 4 and 5 of Law
2725/1999 and the provisions of the Civil Code, concerning the extent of power of the Board of Directors for the cessation of the power of attorney and the revocation of the mandate.

**Is the sports association obliged to submit budget to the State?**
According to the constitutional provisions and the Sports Law, the state subsidy constitutes the funds of the sports federations. The revenues from the tickets of the games and sports events, as well as the membership dues are also included in the circle of the federation's funds. The sports federation is obliged to submit its budget to the General Secretary for Sport, as every subsidized entity, for the amount given as a subsidy (Article 50 par. 7 of Law 2725/1999).

**Which is the procedure for the membership registration?**
The registration to the sports federation requires a decision by the Board of Directors and the expulsion by the General Assembly of the federation (Article 20 par. 2 of Law 2725/1999). In the Sports Federation's General Assembly shall participate any, according to its Articles of Association, associations entitled to vote (Article 93 of Civil Code, Federation's By-Laws, Articles 24 par. 5 and 6 of Law 2725/1999). The General Assembly supervises and inspects the administration bodies and has the right to depose them whenever.

**What is the meaning of the “Departments of Paid/ Professional Athletes”?**
The athletic branch and the categories of the championship games in the undertaking of which the participation of athletes receiving salary is permitted, is defined by decision of the competent Minister for Sport, following the proposition of the relevant sports federation (Article 59 of Law 2725/1999, as it was amended by the Article 10 of Law 3057/2002). The existence of the financial sustainability of the athletic branch, the degree and the possibilities of its development are an essential prerequisite.

**Which is the procedure for the establishment of a sports club (S.A.)?**
The establishment of a sports club (S.A.) is allowed only via the transformation of the Division of Paid/ Professional Athletes. If such a division does not exist, due to the operation of sports clubs within the scope of the relevant sport, the composition of a sports club (S.A.) via the transformation of the division of amateur athletes is also allowed (Article 64 par. 1 of Law 2725/1999). Following the sports club's incorporation, it is subrogated in the rights and obligations of the association towards the State, the legal entities of public and private Law and any third person (Article 64 par. 1 and 2 of Law 2725/1999).

**Who can be shareholders? Restrictions – Incompatibilities**
Shareholders of sports clubs (S.A.) can be only Greek natural persons (Article 69 par. 1 of Law 2725/1999, as it was amended by Article 17 of Law 3057/2002), entities of the public sector, as well as Greek companies or other Greek legal entities of private law.
In paragraphs 8 and 9 of the same Article, it is provided that the in –active- athletes, trainers, referees, referee observers, mediators, owners of agency offices of games prognostics or bets, their spouses and up to second degree relatives, are not allowed, under the penalty of the absolute nullity of the contract, to obtain shares of the sports club (S.A.) they deal with on an athletic or professional basis, also a sports club, its shareholders, members or administrators of a legal entity of private law or a company participating in the capital of a sports club (S.A.), as well as the spouses and up to second degree relatives of all the above natural persons, are not allowed, under the penalty of the absolute nullity of the contract, to obtain, in a direct or indirect way, especially via intermediaries, shares or administration rights or to undertake managerial duties in other sports club (S.A.) of the same or different sport.
Finally, in case of the infringement of any of the provisions of the previous paragraphs by fault of the sports club's bodies, its team is expelled from the Championship, by decision of the relevant
judicial institution, which has the responsibility, following a report of the Committee of Professional Sports or after recourse of any person who has legal interest.

What is the status of the “referees’ leagues”?
The referees’ league is an association according to the provisions of the Civil Code (Articles 78 and following). The Law provides only one referees’ league for each athletic branch (Article 43 of Law 2725/1999, as it was amended by Article 66 of Law 3057/2002) in the area of responsibility of each sports union (Article 11 par. 1 of Law 2725/1999). Members of the referees’ leagues are exclusively referees with diploma, having their permanent residency in the area of responsibility of the league. The evaluation of the referees is provided by the regulations of the sports federation and it is inspected by the competent Minister (Article 27 par. 1 of Law 2725/1999).

Which is the nature of the control of the sports entities by the central administration?
The control is financial and operational. All the subsidized sports entities are inspected by the audit council for the compliance: a) with the provisions concerning the operational and accounting rules of the Sports Law, b) with the regulatory administrative acts and c) for the fulfilment of their financial obligations (Article 52, par. 1 - 2 of Law 2725/1999, as it is amended by Article 77 of Law 3057/2011 and 26 of Law 3262/2004).

Which is the status of the sports services?
According to the law, the sports activity, apart from the professional athletes either in the Divisions of Paid/Professional Athletes or in sports clubs is not considered to be “professional sports activity”. The provisions of Article 33 of Law 2725/1999 (entitled “Rights and Obligations” of the athletes) apply to athletes who are performing in a Division of Paid/Professional Athletes of a sports association or a sports club.
The amateur athlete is not entitled to contract with the sports association, despite the fact that his activity (training, games etc.) may be long-lasting and intense.
In support of the above mentioned, the athlete (individual/team) has the right to conclude a contract with a natural or a legal entity on a sponsoring or an advertising basis, on condition that the contract does not infringe the technical regulations of the sport and the regulations of the relevant sports federation or the International Olympic Committee.

Which is the procedure for the athletes’ transfer?
Every athlete is free to choose the sports association he prefers, in which, in accordance with the Greek case law, he is able to develop his personality in the world of sports (Council of the State, Decision No. 3586/1995).
The terms and conditions for the registration and transfer, the time period, the process, as well as the competent for the transfer approval bodies are determined by special regulations (Article 27 of Law 2725/1999 in combination with Article 33 par. 3 of the same Law).
Free transfer of athlete, namely transfer without his consent, from one sports association to another is feasible, if special grounds justifying his release are explicitly stated in a regulatory administrative act (Article 33 par. 3 of Law 2725/1999, Council of the State, Decision No. 2488/1986). The clause included in the transferring regulation, according to which the transfer is not on the first place allowed without the consent of the athlete’s association was enacted by excess of the legislative authorization (Article 33 of Law 2725/1999, in comparison to the Decision No. 207/2002 of the Council of the State and the Decisions 110, 112/2004 of the Supreme Council for the Resolution of Sport Disputes, in Greek “A.S.E.A.D.”). As regards to team sports, the athlete’s transfer can be conducted only for special cases provided by the law and without the consent of the association.

What constitutes a serious ground for the athlete’s release?
According to the case-law, as serious grounds for the athletes’ release (apart from the athletes – players), are considered to be the following: a) reasons relating to family, professional reasons
(transposition – appointment, sports activity of siblings in the same association), b) studies, c) circumstances, such as the disruption of the relations between the athlete and the association without his fault, due to negligence and failure to cover the costs, the rupture in the relationship with the coach and the alienation.

**Are foreign athletes entitled to participate in the Championships?**

Foreign athletes as well as ethnic Greeks can participate in the Championships, following the proposal of the relevant Federation after the decision of the competent Minister for Sport (Article 33, par. 7 and 8 of Law 2725/1999). In particular, the foreign athletes' registration procedure, as well as the terms and conditions of their registration and transfer are determined by special regulatory administrative acts (ministerial decrees).

**Which is the legal framework for the athlete receiving payment for his performance and the professional athlete?**

By the term “athlete receiving payment for his performance” is considered to be the athlete who concludes contract for sports services with a sports association, having a Division of Paid/ Professional Athletes, whereas the “professional athlete” concludes contract for sports services with a sports club (S.A.), according to Articles 85, 90 par. 1 - 95 of Law 2725/1999. According to Law 2725/1999, the provision of sports services constitutes a labour contract. The minor athletes are not entitled to conclude labour contracts (Article 90 par. 1 of Law 2725/1999). The contract of the “athlete receiving payment for his performance” is regulated by the provisions of Labour Law (Article 33 par. 1 and 2 without prejudice to Article 85 par. 1 and 2 of the same Law). The contracting athletes (either with associations or clubs) receive regular salary, which is determined in the contract without restrictions in the framework of the relevant regulations. In particular, as regards to professional athletes, there is an issue concerning the transferring system of the non E.U. athletes, as well as the participation in games due to nationality.

**Is a professional license required for the exercising of the profession of coach?**

According to Article 31 par. 1 of Law 2725/1999, it is in any case required a professional license, issued by the General Administration for Sport. In addition, the Sports Law provides the written form of the contract.

**Are there provisions for torts in the sports field?**

The sports liability is either contractual or tort, with administrative-disciplinary, ethic and penal aspect. The crime of impersonation as well as any other violation of the terms of the Championship’s Proclamation legitimates the lodging of a complaint by the association harmed by this violation during and until the termination of the game.

**Which is the legal treatment of doping in sport?**

In accordance with the provisions of Law 2725/1999 (Articles 128A-128ID) regarding the fight against doping, the use of banned pharmacological substances in an international level, having as a purpose to enhance the athlete’s performance is not permitted. The national sports federations should implement through their regulations (Article 26, par. 4 in combination with Article 27 of the same Law) the provisions of the Anti-doping Code of the World Anti-Doping Agency (WADA). The Greek Sports Law approaches the issue of doping not only as a crime (penal aspect), but also as a disciplinary – ethical offense (disciplinary aspect).

**Which is the legal framework for the broadcasting of sports games and sponsoring?**

The TV broadcasting rights of sports events are regulated by the special provisions of Law 2725/1999. There are also special provisions concerning the free of charge, as well as the paid TV broadcasting of sports games (Article 84 of Law 2725/1999).
With the term “sponsoring” in sports it is defined the contract of a contributory financial support of a sports activity, an athlete or a sports event, under the terms of the contract. The agency contract for sports sponsoring is treated in most legal orders as “brokerage”, according to the provisions of Article 703 of the Civil Code, as the services and payment concern exclusively the agency and the designation of the other contracting party.

**Which is the procedure for the resolution of sports disputes?**

The sports jurisdictional order is set up out of the framework of the constitutional meaning of “court” (Articles 93 – 96 of the Constitution) as a resolution system of special bodies, either in the form of public institutions (such as the Supreme Council for the Resolution of Sport Disputes), or in the form of private law bodies in the framework of the operation of the sports legal entities.

**Which bodies have jurisdiction in sports disputes?**

The structure of the sports jurisdictional order is the following: 1) the Committees for the Resolution of Financial Disputes (Article 95 par. 1, 2 of Law 2725/1999) resolve the disputes arising from the contracts between athletes or coaches and sports clubs or associations, as institutions of permanent arbitration, b) the jurisdictional institutions of disciplinary nature in the framework of the sports federations and the professional leagues regarding the team sports, namely football, basketball, tennis, handball and polo, c) the “Appeals Committee” of the Greek Football Federation (Article 127B of Law 2725/1999) and d) the “Supreme Council for the Resolution of Sport Disputes” (in Greek “A.S.E.A.D.”), which is competent for the disputes’ resolution at the first and last instance (Article 124 of Law 2725/1999).

**Which are the first instance institutions for the resolution of sports disputes?**

The resolution of the sports disciplinary and financial disputes at first instance belongs to special jurisdictional institutions within the Federations and the professional leagues, as it is mentioned above, as well as to the “Sportsmanship Committee”, located in the Greek Olympic Committee (Article 130 of Law 2725/1999).

**Which are the competences of the first instance sports jurisdictional institutions?**

According to Article 120 of Law 2725/1999, the first instance jurisdictional institutions are competent: a) for the resolution of disciplinary misconducts and other violations, as well as the imposition of penalties, provided by the Games Regulations of the relevant sport, b) for the resolution of disputes regarding cases of bribery in order to alter the outcome of the games and the imposition of penalties and c) for the resolution of any other dispute and the imposition of the relevant penalties conferred to this institution.

**Are the decisions of the first instance jurisdictional institutions challenged?**

The decisions of the first instance jurisdictional institutions, apart from those concerning football, are challenged before the Supreme Council for the Resolution of Sports Disputes, following the lodging of “recourse” in the following cases: a) claims concerning the validity of the game, b) penalties concerning the staging of matches without spectators, c) penalties of deprivation of the right of entry to stadiums or disqualification from the office of the association or the club for a time period more than two months, d) penalties of exclusion of athletes (more that two match days) and coaches or other relating to the team people (more than two months), e) imposition of fine of not less than five (5.000) thousand euros, f) violations of the provisions for the acquisition of shares in sports clubs.

**Has football its own jurisdiction?**

The Hellenic Football Federation (in Greek “Ε.P.Ο.”) is competent for any issue related to its organization and operation. In the framework of the Hellenic Football Federation, there is a three-member disciplinary Committee, appointed by its Board of Directors for a term of two (2) years. As far as the professional football is concerned, the first instance jurisdictional institution has three...
members and it is appointed by the decision of the Board of Directors of the Greek Football Clubs for a term of two years as its jurisdictional institution.

Which is the second instance jurisdiction in football?
The decisions of the Board of Directors of the sports associations, professional leagues and federations and the decisions of the institutions of the above mentioned sports entities provided by the Articles of Association are challenged before the Appeals Committee of the Hellenic Football Federation. The decisions are challenged following the filing of recourse before the Appeals Committee, which is composed by the decision of the Board of Directors of the Hellenic Football Federation for a term of two (2) years. The date of the hearing shall be notified in writing at least eight (8) days before the hearing (Article 127B, par. 4, sentence b’ and 126 par. 1 of Law 2725/1999).

How are the financial disputes resolved?
They are resolved by the Committees of first and second instance. These Committees are institutions of permanent arbitration and their operation is governed by the Regulations, regarding the relations between associations and athletes. In particular:
The first instance Committees are competent for the resolution of prominently sports disputes, arising from the contracts between athletes or coaches and sports clubs or associations with Division of Paid/Professional Athletes, such as the termination of the contract.
The second instance Committees decide on the appeals against the decisions of the first instance Committees of the relevant athletic branch.

Is there any deadline for the issuance of the decision?
The decisions are issued within a period of twenty (20) days after the hearing. After the expiry of this time limit, the decisions of the first instance as well as of the second instance Committees have the force of res judicata.
EMPLOYMENT
What is the main type of employment contract?

It is the open-ended employment contract. Fixed-term employment contracts are permitted in exceptional cases, when the limited duration is justified by some specific (‘objective’) ground, such as the time required to perform a specific task for the employer. Where there is no such ground, the contract is deemed to be open-ended, even if it has been agreed as being fixed-term. Moreover, where there continues to be a specific (‘objective’) ground, the renewal of a fixed-term contract without limit is permitted. Where the specific ground does not exist, it will be presumed to be an open-ended employment contract.

How can fixed-term and open-ended employment contracts be terminated by the employer?

Fixed-term contracts terminate after their term expires or they can be rescinded where there is a serious ground. Open ended contracts are terminated by rescinding them. When a fixed-term contract expires no compensation is owed, but, where an open-ended contract is rescinded the compensation specified by law is payable, as follows:

<table>
<thead>
<tr>
<th>Employees</th>
<th>Compensation in cases where no notice of termination is given</th>
<th>Recission of contract after notice is given</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Notice period</td>
<td>Amount of compensation</td>
</tr>
<tr>
<td>Length of service with same employer</td>
<td>1 month</td>
<td>1 month</td>
</tr>
<tr>
<td>12 full months up to 2 years</td>
<td>1 month</td>
<td>1 month</td>
</tr>
<tr>
<td>2 – 4 years</td>
<td>2 months</td>
<td>2 months</td>
</tr>
<tr>
<td>4 – 5 years</td>
<td>3 months</td>
<td>2 months</td>
</tr>
<tr>
<td>5 – 6 years</td>
<td>3 months</td>
<td>3 months</td>
</tr>
<tr>
<td>6 – 8 years</td>
<td>4 months</td>
<td>3 months</td>
</tr>
<tr>
<td>8 – 10 years</td>
<td>5 months</td>
<td>3 months</td>
</tr>
<tr>
<td>10 full years</td>
<td>6 months</td>
<td>4 months</td>
</tr>
<tr>
<td>For every further year</td>
<td>1 month’s pay more</td>
<td>½ month’s pay more</td>
</tr>
<tr>
<td>Up to 28 years of service</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The first year of an open-ended period is a probationary period, during which the contract can be rescinded without compensation being payable.
However the compensation to be paid cannot exceed a certain amount (30 times the lowest daily wage for unskilled workers times 8 times the number of months of compensation).

<table>
<thead>
<tr>
<th>Length of service</th>
<th>Compensation equal to pay for</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 months – 1 year</td>
<td>5 wages</td>
</tr>
<tr>
<td>1 year - 2 years</td>
<td>7 wages</td>
</tr>
<tr>
<td>2 - 5 years</td>
<td>15 wages</td>
</tr>
<tr>
<td>5 - 10 years</td>
<td>30 wages</td>
</tr>
<tr>
<td>10 - 15 years</td>
<td>60 wages</td>
</tr>
<tr>
<td>15 - 20 years</td>
<td>100 wages</td>
</tr>
<tr>
<td>20 - 25 years</td>
<td>120 wages</td>
</tr>
<tr>
<td>25 - 30 years</td>
<td>145 wages</td>
</tr>
<tr>
<td>30 years or more</td>
<td>165 wages</td>
</tr>
</tbody>
</table>

When rescinding an open-ended employment contract, the employer must not cite the reason for terminating the contract. However, this can be reviewed by the court as to whether the rescission was abusive, and in this case, it must be proven by means of counter-evidence, that the rescission did not take place for the reason cited by the former employee.

**In what cases is rescission of an open-ended employment contract invalid in law?**

- Where the notice is not given in writing and the compensation specified by law is not paid at the same time.
- Where a trade union official is dismissed without approval (for specific reasons only) from the special committee for this purpose.
- Where the dismissal takes place during the course of annual leave.
- Where the dismissal takes place during pregnancy or 18 months after childbirth, unless there is a serious ground for dismissal.
- Where the dismissal is for reasons of gender or marital status, as revenge for not giving into harassment by the employer or as a reaction to a complaint related to unequal treatment of men and women.
- Where the employer does not participate in the cost of self-insurance for the dismissed person aged between 55 and 64 years old, who has at least 4500 days or 15 years of insurance for social security purposes.
- Where group redundancies exceed the limit set by Law.
- Where, in the case of group redundancies, the number of persons aged 55 to 64 dismissed exceed more than 10% of the total number of persons dismissed each month.

**What rules apply in relation to the pay of employees?**

Pay can be freely negotiated but is subject to the minimum amount specified in the applicable Collective Labour Agreement (CLA). If the employee falls within the scope of some sectoral, cross-sectoral or other CLA because of his area of specialisation, the most
favourable CLA overall for him will apply, i.e. it is not possible to select and put together individual provisions from various CLAs.

What are the working time limits?
The rule is 8 hours of work, 5 days a week. In general, it is not permissible to ‘offset’ working time, not even with the employee’s consent. The only exceptions are as follows:
a) a 9-hour working day is permitted, where the total working time for the week does not exceed 40 hours.
b) over the course of a 6-month period, work can be increased by 2 hours a day (i.e. up to 10 hours) with a corresponding reduction in the working time each day by 2 hours during the next 6-month period (i.e. up to 6 hours). Instead of reduced employment, it is possible for rest days to be given.
c) It is also possible to increase the rate of work by up to 256 hours within a period of 8 calendar months, with a corresponding period of reduced employment during the other months of the same calendar year.
Special legislative provisions apply to undertakings which operate using shifts.

What pay applies for night work?
There is a 25% augment to the statutory hourly wage. An agreement concerning the salary paid to cover night work, where it exceeds the minimum statutory limits, is lawful.

What rules apply to working exceeding 8 hours a day and 40 hours a week?
Work between 41 and 45 hours a week is called ‘extra work’ and is not taken into account in the limits specified for permissible overtime. Work exceeding 9 hours a day and/or 45 hours a week is called overtime.
Overtime within the limits specified by law is lawful overtime, but the limit depends on the sector of employment (industry, retail outlets, offices, etc.). A notice of overtime work must be sent to the authority either before or after the overtime takes place, depending on whether it is urgent or not, and must be entered in the Overtime Register. Overtime exceeding the lawful limit or for which the aforementioned procedures are not complied with is unlawful overtime.

How is extra work and overtime paid on the basis of a 5-day working week?
Extra work is paid at a rate of 20% on top of the hourly wage paid. Lawful overtime is paid as follows: up to 120 hours a year by augmenting the hourly wage paid by 40%, while for overtime above the 120 hour limit, the augment is 60%. Unlawful overtime is paid with an 80% augment. Contrary to the situation with extra work, the agreement that the salary paid will also cover an undefined number of overtime hours, is invalid.

What scope is there for reducing payrolling costs?
- It is possible to negotiate an enterprise-level CLA with staff whose financial terms are less favourable than those specified in the relevant sectoral CLA, but only if the latter has not been declared applicable on a mandatory basis by the Minister of Employment.
- It is possible to switch to part-time work for daily work of less than 8 hours. The agreement must be in writing and notified to the Labour Inspectorate within 8 days.
- It is possible to negotiate with employees and to impose an employment by rotation scheme for 9 months in each calendar year. Commencement of such scheme must be notified to the Labour Inspectorate within 8 days.

- It is possible to temporarily lay off a certain part of the staff (but not specific individuals) in writing. The layoff must relate to a maximum period of 3 months per year. While temporarily laid off employees should receive half of their average normal pay over the last two months while they had been working full time.

- It is possible to employ young people aged 18 to 25 for two years at pay rates 20% lower than the statutory minimum. A condition for such recruitments is that the employer has not reduced the number of staff over the previous 3 months.

- It is possible to rescind the employment contract without limit at undertakings which employ up to 20 employees. At larger undertakings, the dismissals are deemed to be group redundancies and are prohibited if they relate to more than 6 people per month for a staff of between 20 and 150 people or 5% up to a maximum of 30 people per month for a staff of over 150 people (this percentage can be changed by Ministerial Decision). It should be pointed out that, in the case of voluntary departure by employees in the context of a social plan and at the same time of dismissal of at least 5 employees per month, the voluntary departures are taken into account in the aforementioned limits. In order to make group redundancies, the employer must first consult with employees. Where no agreement is reached, the supervisory authority will approve or reject the employer’s application within a period of 10 days.

- Employees can be lent.

**What are the conditions for lending employees?**

- Simple lending of employees, which normally takes place between companies in the same group, is a tripartite contract since it requires the consent of the employee as well.

- Hiring out employees on a professional basis is done by specialised companies which have obtained authorisation for that purpose from the State. The duration of that loan period may not exceed 36 months and requires that there be emergency, temporary or seasonal needs at the business, which borrows the employee. The loan of the employee may be renewed, but only after a period of 45 days from the expiry of the last loan period. Where those time limits are exceeded, the law presumes that there is an open-ended employment contract between the employee and the business which borrowed his services.

**What are the mandatory official holidays and how is work on those days and on Sunday paid for?**

25 March, Easter Monday, 15 August, 25 December and, for retail outlets, Holy Friday up to 13:00 hours. May Day may also be designated as a mandatory holiday by decision of the Minister of Employment. Work on official holidays is paid by augmenting the statutory daily / hourly wage by 75%. An agreement to be reached on the salary paid to cover work on Sundays and official holidays, where it exceeds the minimum statutory limits, is lawfull.

**What rules apply to managerial staff?**

Managerial staff and employees, who hold positions of trust, are those who perform general management-related duties which affect the work of the business which employs them, as well as those employees who hold positions of special trust which could substantively affect the taking of decisions. The criterion for determining whether an
employee falls into this category include, high pay, the power to represent the company, the ability to hire or dismiss staff, etc.
This category of employees is excluded from the application of the favourable provisions relating to overtime, work on official holidays, night work, work away from normal place of work and leave.

How long is the annual leave and what pay are employees entitled to?
Employees are entitled to a minimum of 20 working days of leave (in the case of a 5-day working week) or a part thereof for pro rata temporis of employment. For each additional year of work, employees are entitled to an additional day of leave up to a total of 22 days. Where the employee works for 10 years with the same employer or 12 years with any employer, he is entitled to 25 days leave. After completing 25 years of work, employees are entitled to 26 days leave. Full pay is owed for the days employees are on leave. In addition they are also entitled to an annual leave bonus equal to the pay for leave, maximum half a salary.

What privileges do working mothers have?
- Maternity leave: A total of 17 weeks (8 weeks before childbirth and 9 weeks afterwards), with the salary being paid for 15 days where the employee has worked for one year and for one month where she has worked for more than one year.
- Childcare leave: a working mother or father is entitled for 30 months from the end of maternity leave either to come to work one hour later or leave work one hour earlier each day. However, he/she can arrange with the employer to work for 2 hours less per day for the first 12 months and 1 hour less for the next 6 months.
- Special 6 month leave without pay.
- Parental childcare leave without pay for 3½ months until the child turns 3½ years old.

What rules apply when the employee is absent due to illness?
The employee can claim half of his pay for the first three days and full pay for 15 days for the first year in employment or 30 days for any year thereafter, less the amount which the employee received from his social security provider.

What are the rules applicable in the case of occupational accidents?
Where the employee is insured for social security purposes with the IKA Fund, the employer is exempted from the obligation to make restitution of the material harm suffered by the employee. The employer is, however, obliged to make restitution of the moral harm suffered where the accident was due to the employer’s fault.

How long can an employee be absent for work due to illness?

<table>
<thead>
<tr>
<th>Length of service</th>
<th>Minimum length of absence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 4 years</td>
<td>1 month</td>
</tr>
<tr>
<td>Up to 10 years</td>
<td>3 months</td>
</tr>
<tr>
<td>Up to 15 years</td>
<td>4 months</td>
</tr>
<tr>
<td>Over 15 years</td>
<td>6 months</td>
</tr>
</tbody>
</table>
Absence for periods of times outside these limits can be deemed to be tacit rescission of the contract by the employee under strict conditions.

Is there an obligation to mandatorily employ people?
Yes, 8% of the total staff, where the undertaking employees over 50 people. Undertakings which reported balance sheet losses during the last two years are exempted from this. These people are placed by the Authority and the contract can be rescinded only with the Authority's approval and only for a limited number of specific grounds.

What rules apply to non-EU foreigners?
Non-EU foreigners can be employed after the receipt of the relevant entry visa from the consular authority at their place of residence, which is provided after an invitation is sent by the Greek employer. A residence and work permit for this type of case is provided in numbers which are regulated by the public administration, is for one year and must be renewed every two years.
The following persons are exempted from this procedure:
- Senior executives of Greek branches and subsidiaries of foreign companies
- Persons seeking to make an investment of €300,000 or over
- Technicians performing emergency repairs for a period of up to 3 months
- Persons employed by an undertaking established in the EU or EEA, who are sent to Greece to be employed by a Greek undertaking
- Technicians from non-EU companies sent to Greece to install or maintain machinery.
A) COLLECTIVE BARGAINING / COLLECTIVE LABOUR AGREEMENTS

What is the content and the scope of a Collective Employment Agreement (CEA)?

A CEA is the agreement reached as a result of collective bargaining between the Employer(s) on the one hand and trade unions on the other. CEA provisions apply to employees engaged under employment agreements of depended services of private nature, to people engaged in agricultural and related activities as well as to domestic employees. A CEA may regulate issues arising from the exercise of the trade union rights, social insurance issues except for pension issues, issues relating to the business policy as far as it affects employment relations, the interpretation of regulatory terms of CEA, rights and obligations of the contracting parties, the terms and conditions applicable to the individual employment agreements, as well as the mediation and arbitration procedures.

All the aforementioned employees fall under the scope of one CEA?

No, there are different kinds of CEAs, depending on their scope of application. In particular, there are: a) the General National CEA, that relates to the employees of all the country, b) Branch CEAs, that relate to employees that are engaged in the same branch of business activity of a certain area or of all the country, c) Professional (national and local) CEAs, that relate to employees that are engaged in the same profession in national or local level, and d) Business CEAs, that relate to employees engaged in the same undertaking.

Who is competent to conclude CEAs?

Any Employer is competent to enter into a CEA as regards all employees engaged in its undertaking, regardless of the number of the employees. On the part of the Employees, competent are the trade unions of all grades that are most representative within the scope of application of the specific CEA. The most representative trade union is determined by the number of employees who have voted at the last elections for the election of the members of union's Board of Directors. For instance, the General National CEA is concluded by third grade trade unions and employers' organisations of broad representation. Certain trade unions are not authorised to conclude CEA (local branch, labour centre, legal entities¹). By way of exception, in case of absence of a competent first grade trade union to conclude CEA, legal entities are entitled to proceed to the conclusion of CEA, provided that they have been established by at least 3/5 of the

¹. See below under C2
employees of the undertaking, irrespective of the total number of the undertaking’s employees and that their duration is limited.

Are the terms of the CEA obligatory and to what extend? What happens if many CEAs are applicable in a specific employment relation?

As a general principle of labour law, the provision which is most favourable for the particular employment relation, initially as regards remuneration and then as regards other issues, is applicable. Based on the above, the following conclusions can be made:

a. The regulatory provisions of CEAs are directly enforceable in the sense that they prevail over any law provisions that contain less favourable provisions for the employee unless they are of mandatory nature for both parties.

b. The provisions of the individual employment agreement prevail over those in the CEA if the first are more favourable for the employee.

c. The provisions included in the Branch and the Business CEA prevail over those contained in the Professional CEA, even if they are less favourable for the employee.

d. The General National CEA contains the minimum statutory provisions for the employees of the country. Any deviation from the terms thereof to the detriment of the employees is absolutely prohibited.

e. As long as the application of the newly enacted Medium Term Legal framework of Financial Strategy (provisional law) is in force, in case of concurrence between Branch and Business CEA, the Business prevails, but it cannot contain provisions less favourable for the employees than those provided under the National General CEA.

f. In any case, in case of succession of CEA, the above general principle is not applicable.

Who is bound by the CEA?

a. The National General CEA binds the employees of all the country, as well as those engaged in the Public sector under an agreement of private nature, in legal entities of public law and in local authorities.

b. The other CEAs bind the members of the contracting parties thereof.

c. The Business CEA bind all the employees engaged in the Employer’s undertaking.

d. Accession to the CEA is allowed if made by a trade union which is not bound by any other CEA and in relation to CEAs within its competence and binds the Employer.

What is the term and termination of the CEA?

The minimum duration of a CEA is one year and if set for a time period over one year is deemed to be of indefinite duration. The CEA is effective from the date of its registration in the book kept at the Labour Inspection Authority of the competent Prefecture and the competent central service of the Ministry of Employment and terminates after the lapse of the time period stipulated or by a termination notice. After the termination of the CEA, its statutory provisions remain valid for six months thereafter and apply on the newly employed personnel. After the lapse of the aforementioned period of six months the existing employment terms apply until the termination or amendment of the individual employment agreement. A CEA of indefinite duration can be terminated by termination notice after the lapse of one year since it has been entered into force and before that, it can be terminated if the working conditions have significantly been altered.
What are the penalties in case of violation of a provision of CEAs?
The infringement is certified by the Labour Inspector and a pecuniary penalty of an amount of approximately 600€ is imposed to the Employer.

B) STRIKES/LOCKOUTS
Is the right to strike provided under the Greek Law?
In Greece, the right to strike is recognized and guaranteed by the Constitution and by law 1264/1982 as a means for the safeguard and promotion of the rights of the employees of financial, insurance and employment nature in general. The Constitution also provides for exemptions (i.e. judges must refrain from any form of strikes) and restrictions on the right to strike (i.e. professionals engaged in undertakings of the public sector or in public utility services, whose operation is vital for the service of essential needs of the social community).

Who is entitled to call in strikes? Is there a procedure that has to be followed?
The right to strike is exercised by the legally established trade unions following a) a resolution by the competent to call in strikes body of the most representative trade union in the company, namely, the Board of Directors of the second and third grade trade unions and the General Assembly of the first grade unions, b) prior notification to the Employer, 24 hours in advance that they intend to go on strike, c) disposal of the necessary “minimum service” during the strike period for the safety of the premises of the undertaking and the prevention of accidents and destructions, which services are provided under the Employer’s instructions. The security staff is determined through a special agreement made by the most representative trade union and the management of the undertaking, which must be deposited to the Ministry of Labour until the end of November and has one year duration. If the aforementioned conditions are met, then, the strike is legal.

Who can join the strike?
Any employee that is a member of the union that called in the strike, any employee of the service/branch or the undertaking that is not a member of the union that called in the strike as well as any employee that is not member of any union but the strike was called in by the most representative union in relation to their employment rights.

Is there a different treatment as regards employees engaged in the public and those engaged in the private sector?
Before calling in strikes, the civil servants must notify the Employer 4 days prior to the strike about their requests, by a written document serviced by bailiff to the Employer, the supervising Ministry and the Labour Ministry. The disposal of the necessary “minimum service” is also required for meeting the essential needs of the social community during strikes.

Can the Employer prevent employees from working as a means against strike?
No, lock-out is forbidden by the law.
What are the measures that employers take to mitigate the impact of a strike going on for an extended period of time?

The Employer can resort to Court by a petition and request that the strike is declared abusive. During the strike period the Employer cannot replace the existing employees who are on strike by hiring temporary or permanent personnel or strikebreakers.

C) TRADE UNIONS/LABOUR UNIONS

What is the role of Trade Unions?

To negotiate with the employers in order to conclude CEA. Their aim is to continuously safeguard and promote the labour, financial, social, insurance, and union interests of the employees.

How many trade unions are provided under the law?

The trade unions are ranked as first, second and third grade trade unions.

i) A first grade trade union may acquire the status of a) labour associations, b) local branches of trade unions of a broader area/region (whose members may be all over Greece), and c) legal entity (without legal personality). The criteria to join a labour association are either the profession or the undertaking itself or the branch of the undertaking's business activity, where the employee provides its services. In particular, the legal entity constitutes a special form of trade union, aiming at the facilitation of the trade unionism in the absence of an association which has as members half of the employees (40 people) and the constitution thereof is provided under the law under specific conditions: a) they do not have legal personality, b) their founding members must be at least ten, c) their founding act (memorandum of association is deposited at the secretary of the Court, d) only one legal entity can be established to each undertaking, provided that the total number of the employees engaged in the undertaking does not exceed 40 employees, e) its duration cannot exceed six months, f) it should expressly refer its objective which is to deal with any problem arising out of the relation between employer – employees.

ii) The second grade trade unions consist of a) Federations, which consist of at least 2 labour associations and b) Labour Centres, which consist of at least 2 labour associations or local branches and organise employees with the same profession.

iii) The third grade unions consist of a) Union of Federations and b) Union of Labour Centres.

Which is the significance of this distinction?

The organisational structure of the trade unions is linked to the kind of CEA that each union can conclude, and binds respectively its members.

Is there any restriction on the number of trade unions operating in the same undertaking, branch of business activity or profession?

No, it is possible that many trade unions operate simultaneously.

Are trade unions provided by law?

The existence and the operation of the trade unions is in detail governed by the law, i.e. as regards their financial resources, operation, administrative bodies and their function.
and election procedure. The law also provides for specific rights for the facilitation of unionism / activity of their members.

D) EMPLOYMENT ARBITRATION

Who is entitled to resort to mediation/arbitration?

Only the party of the collective dispute that is entitled under the law to negotiate for the conclusion of CEA.

What is the subject matter of the mediation/arbitration?

Collective disputes arising from the procedure for the conclusion of the CEA. In particular, if collective bargaining fails, namely if the interested parties fail to reach an agreement and conclude Collective Employment Agreement, they are entitled to resort to mediation and / or arbitration.

Is there a specific procedure provided by the law to be followed?

The mediation/arbitration terms and procedure are provided either under clauses contained in the CEA, or by mutual agreement of the parties and in case such agreements do not exist, law provisions apply. The procedure briefly has as follows: Any of the interested parties, jointly or separately can file a petition before the competent authority (Mediation and Arbitration Organisation). The petition necessarily includes propositions, requests, alternative solutions and any other information which facilitates negotiations. The purpose of Mediation is to have the parties sit down with a neutral third party (Mediator), who is chosen through a list of mediators (and in case of incoherence they are chosen by lot) and who tries to facilitate a settlement to the dispute. For this reason, the Mediator, after having examined the formal preconditions i.e. if the parties have authority and competence to conclude an CEA, proceeds to individual examination of the parties, carries out investigation in relation to the employment terms and conditions and collects any information required in particular in relation to the financial situation, economic policy and personnel policy that the Employer is obliged to provide. If the parties do not reach an agreement within 20 days from the date that the Mediator has taken up his duties, the Mediator submits his proposal within certain time limit, which the parties either accept or reject within 5 days from the submission. In the first case, the proposal becomes CEA and is signed by the parties.

Can other trade unions intervene in the mediation procedure?

Yes, any trade union of the same undertaking, of the branch or of the profession that is competent to conclude the CEA under dispute can intervene.

Who is entitled to resort to arbitration and under what circumstances?

The interested parties can jointly address the dispute to arbitration at any stage of the negotiations. One party can unilaterally resort to arbitration only if a) the other party has denied to join mediation procedure and b) both parties have participated in mediation procedure.
What is the validity of the Arbitration Decision and what kind of issues does the decision determine?

The arbitration procedure is confined to the determination of the minimum wage (minimum hourly/monthly income necessary for a worker to meet basic needs) and the decision has the same validity as a CEA and is effective from the next day from the filing of the petition for mediation.

Give me a brief description of the procedure.

The arbitration is conducted by one or three arbitrators, the latter following request by any party in case of unilateral resort to arbitration. The arbitrator is chosen through a list of arbitrators (and in case of incoherence they are chosen by lot) and examines all the evidence collected by the mediator as well as the economic situation, etc. The decision is issued within 10 days from the assumption of the arbitrator’s duties, if mediation has preceded, otherwise, within 30 days. It should be noted that for a period of 10 days from the resort to arbitration, the right to strike is suspended.

Is the Arbitration Decision final?

Any dispute arising out of or in connection with the validity of the decision can be challenged before the Courts through the special procedure of labour disputes, by a claim document filed by any party participating in the collective dispute, and the judgment is binding by all parties bound by the Arbitration decision. Short time limits are provided by the law for the hearing of the case and for the exercise of appeal.
Which are the main insurance funds in Greece?

- IKA - ETAM (Social Insurance Fund - Auxiliary Fund for Employees)
- OAEE (Freelancer Insurance Organisation)
- Organisation of Agricultural Insurance (OGA)
- Unified Fund of Independent Employees (E.T.A.A.)
- Unified Insurance Fund for Media Employees (ΕΤΑΠ – MME)
- Unified Auxiliary Insurance Fund for Salaried Employees (ETEAM)
- Private Sector Auxiliary Insurance Fund (TEAIT)
- Insurance Fund for Bank and Utility Company Employees (TAYTEKO)
- Auxiliary Insurance Fund for Public Sector Employees (TEADY)
- Auxiliary Insurance and Welfare Fund for Employees in the Armed Forces (TEAPASA)
- Private Sector Welfare Fund (TAPIT)
- Public Employees Welfare Fund (TEADY)
- Unified Insurance Fund for Bank Employees (ETAT)

The insurance funds with the most insured parties in Greece are the IKA-ΕΤΑΜ and the OAEE.

What is the ΙΚΑ-ΕΤΑΜ?

The ΙΚΑ-ΕΤΑΜ is the largest Social Insurance Organization in Greece and covers employees who provide:

- Dependent employment in Greece, regardless of their employer’s status (Private - Public Sector, public entities, etc.) provided that they are not covered by another Primary Insurance Agency for their work.
- Dependent employment abroad for an employer based in Greece, provided that their employment takes place in a country does not have a bilateral agreement with Greece or does not belong to the European Union.
- Their personal employment under a work contract as their primarily or co-primarily occupation, provided that they are not covered by another Primary Insurance Agency for their work.
- The members of their family.
- Foreigners.

How are contributions paid?

Both the employee and the employer participate in paying the insurance contributions. The sum is paid in full by the employer, within the period provided by law.

Can I choose whether or not to be insured at the IKA-ΕΤΑΜ?
No, insurance is mandatory if the conditions stipulated by law are fulfilled.

What benefits does insurance at the IKA-ETAM offer?

- From the IKA-ETAM
  - Health care
  - Hospital care
  - Sick pay from sickness or accidents, maternity, etc.
  - Pension
  - Other Benefits
- From the OAED
  - Unemployment benefit
  - Military service benefit
  - Family benefits
- From the OEK (Workers’ Housing Organization)
  - Mortgage loans or ready houses
  - Rent subsidy
- From the Workers’ Club
  - Social Tourism
  - Entertainment

What is auxiliary insurance?

Auxiliary insurance was created to increase the sum of the main pension of the directly insured for the same occupation. As of 1/2/1983, if they do not belong to a particular Sectoral Auxiliary Fund, the directly insured of the IKA-ETAM are covered by the ETEAM insurance (former IKA-TEAM). This is different from the sector subsumed to the IKA-ETAM and named IKA-ETAM-ETEAM, which aims to the additional auxiliary insurance of the staff of public entities or organizations who receive pensions from a basic insurance fund according to specific provisions on public employees and do not receive another auxiliary insurance for the same occupation, as of 1/4/98.

What happens if I have been working abroad?

If an insured of the IKA-ETAM has also conducted insurable work in Member States of the European Union, in countries of the European Economic Area EEA (Norway, Iceland, Liechtenstein) and Switzerland, he/she can count these periods towards their entitlement to pension (for retirement, disability and survivors) as well as for calculating the amount of pension, both in Greece and in the other State where they had worked, according to the EU Insurance Regulations 1408/71 and 574/72 on migrant workers. Insurance periods may also be jointly calculated for other reasons, such as voluntary insurance and entitlement to sickness benefits in kind and in cash.

When is a person entitled to pension from the IKA-ETAM?

There are two categories of insured in the IKA-ETAM:
1. The insured at the IKA-ETAM, who joined its insurance for the first time before 01/01/1993. The provisions of the Law are different for men and women.
2. The insured at the IKA-ETAM, who joined the insurance for the first time from 1.1.1993. The provisions of the Law are different for men and women.
There is the possibility to award a full or reduced pension. The entitlement to pension, the amount of pension and the time of its reception depend on the number of insured days of each insurer, his/her age, the year during which they complete 60 years of age and 35 years of insurance, the type of work and whether they belong to a vulnerable social group (e.g. mothers with disabled children).

Who are entitled to disability pension?

A. For those insured at the IKA-ETAM before 1.1.1993: Disability Pension due to common diseases is available to insured parties that will be judged by the Health Committees of the IKA-ETAM as disabled with a disability percentage due to a common disease that entitles them to disability pension provided that they have been insured with the IKA-ETAM for:

- 4,500 days, or
- 1,500 days, of which at least 600 in the last 5 years before the year in which the disability occurred, or
- the insurance days, depending on age, referred to in the following table, of which 300 in the last 5 years before the year in which the disability occurred.

B. For those insured at the IKA-ETAM after 1.1.1993:
The insured parties judged by the Health Committees of the IKA-ETAM as disabled due to injury, illness or impairment, either mental or physical, in accordance with the law, are entitled to a disability pension provided that they have completed the minimum insurance period under the following conditions:

- 4,500 days, or
- 1,500 days, of which at least 600 in the last 5 years before the year in which the disability occurred, or
- If they have not completed 600 days of work, the five-year period is extended according to the period of any subsidy due to illness, unemployment or retirement.

What is the OAEE?
The Freelancer Insurance Organisation (OAEE), a new single insurer resulting from the consolidation of no longer existing funds, began its operation on 1/1/2007. The OAEE is the obligatory insurer for all self-employed professionals, craftsmen, traders and motorists. On 1/8/2008, pursuant to law 3655/08 on the Administrative and Organizational Reform of the Social Insurance System, the Basic Insurance Division of the Insurance Fund of Shipping Agents and Employees (TANPY), the Hoteliers’ Welfare Fund and the insured parties of the Basic Insurance of the Welfare Fund and Auxiliary Insurance of Racing Personnel (TAPEAGP), riders and trainers joined the OAEE. After registration with the OAEE, insured parties are obliged to pay their corresponding contributions.

Under what conditions is the right to old-age pension established at the OAEE?
At the O.A.E.E, insured parties are entitled to old-age pension after the cessation of their occupation. Moreover, there are two categories of insured parties:

1. Insured parties who joined the insurance organisation for the first time before 01/01/1993.
2. Insured parties who joined the insurance organisation for the first time as of 1.1.1993.

Like in the IKA-ETAM, there is the possibility to award a full or reduced pension. The entitlement to pension, the amount of pension and the time of its reception depend on insured days of each insurer, his/her age, the year during which they complete 60 years of age and 35 years of insurance, their previous insurance organisation and whether they belong to a vulnerable social group (e.g. mothers with disabled children).
What are the benefits and other bonuses received by insured and pensioners of the O.A.E.E?

Benefits include Medical, Dental, Pharmaceutical, Hospital and Additional care (e.g. provision of wheelchair and other medical remedies with discount). Moreover, the OAE can provide childbirth, funeral expenses and working accident benefits.

Additional special benefits:

1. AIR TREATMENT
   This is granted to all old-age or disability pensioners who suffer from special identified serious diseases such as tuberculosis, lung cancer, etc., renal failure or transplants of kidneys, lungs, the heart and liver.

2. FULL or SOLIDARITY DISABILITY
   This benefit is available to those retired due to disability or familial death, provided that they need continual monitoring, as well as to those retired because of old age if blind in both eyes.
   In this case, the amount of pension is increased by 50%.

3. NON-INSTITUTIONAL or PARAPLEGIC
   This is granted to insured persons, pensioners and members of their family suffering from paraplegia and quadriplegia, from myasthenia - myopathy with a disability percentage of 67% or more, with a disability percentage of 67% due to amputation of both arms or legs or one upper and one lower limb, etc.

4. SOCIAL WELFARE BENEFIT (E.K.A.S.)
   This is granted to pensioners due to old age and familial death, provided that they have completed their 60th year of age and to disability pensioners and their children without age limit that meet and do not exceed the income criteria applicable each year.

What is the O.A.E.D.?

The Workforce Employment Organization (OAED) covers the following:

- Vocational Guidance of the workforce.
- Technical Vocational Education and Training of the workforce.
- facilitation of contacts between supply and demand of labour.
- various benefits, such as conditional subsidies for the unemployed, the supplementation of the pregnancy and maternity benefits provided by the IKA etc.

What conditions must be fulfilled for an employee to receive unemployment benefits from the O.A.E.D.?

If they receive benefits for the first time:

- The insured party must have been working 80 days a year for the past two years before they receive the benefit. However, they must have been completed 125 days of work in the last 14 months, without counting the last two months.
- Insured parties who have completed 200 working days (without counting the last two months), of which at least 80 days a year in the previous two years before their dismissal are also entitled to an unemployment benefit.

If they receive benefits for the second time:

- Insured parties must have worked 125 days in the last 14 months before their dismissal, without counting the working days in the last two months (in the 125 days).
- For those employed in the tourist sector (or seasonal occupations, such as musicians, actors, etc.) 100 working days in the last 12 months are sufficient.

Applications must be submitted within 60 days from the dismissal date to the relevant Service of the beneficiary's residence. The benefit is paid once a month for 25 days.
When is an unemployment benefit paid?
The unemployment benefit is payable after a waiting period of six days. The waiting period begins on the day of employment termination and ends after the sixth day after this. The benefit is paid once a month for 25 days.
The duration of benefit depends on how many days of work the insured has in the above critical periods (14 months, 12 months or two years, see question and answer no. 17) and is scaled according to the number of working days of the unemployed before the termination of employment.
If the employee is still unemployed after the regular subsidy, he receives 13 daily unemployment benefits per month for three months. The daily benefit is that which he received during the regular benefit period.

What is the amount of the unemployed benefit?
The unemployed benefit consists of the basic amount and its increases due to family burdens. The basic amount is up to 40% for workers and 50% for employees of the implicit wage insurance class of the employee for the insurance benefits received.
Their wages are those proved by the insurance booklet of the IKA, based on which the insurance contributions were calculated at the time when the employment was terminated.
This includes the benefits paid by the employer and the Easter and Christmas Gifts paid to employees.
The basic daily unemployment benefit is increased by 10% for each member of the family of the unemployed, without restriction. Family members are: a) the spouse or the disabled and indigent spouse (male), b) unmarried children, c) the mother and the disabled and indigent father and d) the orphans of father or mother, siblings and grandchildren as well as orphans only of father or mother siblings or grandchildren if the surviving parent is included as a member of the insured family, until the completion of 18 years of age and until they are married. The children of the insured shall be regarded as family members, provided that they are unemployed until their 24th birthday or studying until their 26th birthday.
The basic amount of the benefit cannot be less than 2/3 of the wages of an unskilled worker, taking into account that paid during the subsidy and therefore if the wage is increased, the subsidized party is entitled to indexation of the benefit.

Are there any other benefits for the employee or unemployed?
- Family Benefit 2011
- Special Seasonal Help of Article 22 of Law 1836/89
- Special Protection of Maternity
- Special Help after Regular Unemployment Benefit Terminates
- Special Help after staying in the Unemployed Registers for more than 3 months
- Long-term unemployed Benefit
- Outstanding Remuneration due to Insolvency of Employer
- Special Benefit to those who served a custodial sentence
- Additional Maternity Benefits
- Special Help - Retention
- Benefit for young men / women from 20 to 29 years
- Military service benefit
- Availability allowance
What is the AMKA?

It is a unified identification number for work and social insurance. Essentially, it is an insurance identification for all citizens and is mandatory by law for all since October 2009.

Under what conditions is financial assistance provided to Persons with Severe Disabilities of 67% or more?

Under the following conditions:
1. People who do not belong to a specific financial support programs of the Welfare Service, and, due to physical, mental or emotional illness or disability, are disabled by at least 67% (67% or more) and unable to exercise occupations according to the findings of 1st and 2nd degree Health Committees.
2. a) Uninsured (health care by the Social Welfare Administration or any other insurer as required by the current Law).
   b) Indirectly insured [excluding those indirectly insured due to death of the direct insured (father or husband) who receive the pension, in which case they are considered as directly insured].
   c) Insured in the O.G.A as overage.
   d) Directly insured who do not fulfil the insurance requirements for retirement from the insurance fund.

The following are not entitled to benefits: a) those retired abroad, b) those who are hospitalized with public expenses as inpatients or inmates in public, nursing and welfare institutions, respectively, for a period exceeding three months.
IMMIGRATION
This summary is designed to vide basic information about the VISA and RESIDENCE PERMIT application in Greece. As changes in the applicable laws and procedures may arise any time, the present report may be considered as a general guide and does not constitute legal advice. For current and detailed information regarding the applicable legislation/procedures as well as a tailor made solution to the specific case, please contact the legal professional with whom you work at Vardikos & Vardikos.

GENERAL INFORMATION ON VISAS

Schengen short-stay visas

Uniform visas are the authorization or decision granted in the form of a sticker affixed by a Schengen Contracting Party to a passport, travel document or other document which entitles the holder to cross the border. Mere possession of a visa does not entitle automatic right of entry.

Types of short-stay visas

Airport Transit Visa (Type A):
This visa entitles aliens who are required to hold such a visa, to pass through the international transit area of airports.

Transit Visa (Type B):
This visa entitles aliens who are traveling from one third state to another third state to pass through the territories of the Contracting Parties.

Short-term or travel visas (Type C):
This visa entitles aliens who seek to enter the territories of the Contracting Parties, for reasons other than to immigrate, to carry out a continuous visit or several visits whose duration does not exceed three months in any half-year from the date of first entry. As a general rule, this visa may be issued for one or several entries.

Group Visa:
This is a transit visa or a visa limited to a maximum of thirty days. Group visas may be issued to groups of between 5 and 50 people. The person in charge of the group must possess an individual passport and, where necessary, an individual visa.

Visas with limited territorial validity (LTV):
This visa is affixed in exceptional cases to a passport, travel document or other document which entitles the holder to cross the border, where the visit is authorized only in the
national territory of one or more Contracting Parties, provided that both entry and exit are through the territory of this or these Contracting Parties.

Long-stay visas
Cases of entries aimed at long stay, for reasons that include the notion of immigration, shall be exclusively governed by the national law of the member states, according to the Schengen Agreement, and shall be issued for the reasons explicitly set out by the member state’s national immigration policy.
In particular:
The issue of entry and stay on Greek territory for reasons including the notion of immigration is determined by Law 3386/2005 “on Entry, Stay and Social Integration of Third Country Nationals on Greek Territory as amended and in effect today.
Consular authorities can grant:
A) either a National Single Entry Visa, type D, for a maximum length of ninety days and valid for three months,
B) or a National Multiple Entry Visa (Type D+C) of a maximum length of ninety days and valid for three months, also valid as a short-stay visa.

Long-stay visas which are concurrently valid as short-stay visas
(Visas Type D + C)
This (type D) visa does not authorize its holder to cross the external borders or move freely within the Schengen area until they are granted a residence permit.

Schengen visa documents
In order to be granted a short-stay visa, interested applicants must fill out a copy of the harmonized uniform-visa application form (pursuant to EC Council Decision 354/2002), accompanied by a recent photograph of the applicant.
As a general rule, the applicant shall be called on to appear in person in order to verbally justify the grounds for the application.

Rejection of visa application
According to Law 3386/2005 Article 8 paragraph 1 on “Entry, residence and social integration of third country nationals in the Hellenic Territory” (Government Gazette Of The Hellenic Republic 212/ Vol. A /23.08.2005, p. 3331), the decision regarding rejections of visa applications by diplomatic and consulate authorities does not need to be specially justified, except in some categories of third country nationals and subject to public order and security considerations.

Refusal of entry
According to the General Provisions of the Common Consular Instructions, “mere possession of a uniform visa does not confer automatic right of entry”. Furthermore, the Greek border authorities can reasonably prohibit the entry of a third country national in Greece.
A residence permit is an authorisation issued by the competent Greek authority that grants its holder – a third-country national – the right to legal residence in Greece; it also ensures the right to re-enter our country, providing the holder with a right to free movement within the Schengen area for a period of ninety days during any half-year (article 21 of the Convention Implementing the Schengen Agreement). The essential and necessary precondition for the issuance of a residence permit is, generally, that every applicant holds a special national visa. The following Categories of residence permits exist along with the types of permits included therein:

**A. Residence permits for employment**

**A1. Dependant employment or provision of services of work**
A third country national may enter Greece for employment under a dependant – employment relation, with a specific employer and for a specific type of employment. The applications are filled exclusively by the intending employer at their Municipality of residence (or registered office in case of corporate entity). Eligible employers need to present a minimum income (€24,000 net income declared for individuals and €60,000 gross income for professionals and corporate entities).

Upon the approval the employer has to deposit a bank guarantee equal to the amount of 3 month salaries, before the administrative decision for employment is granted and sent at the nearer Greek Consulate of the residence. The bank guarantee shall return to the employer upon the issue of the residence permit in favour of the third country national.

Upon arrival of the third country national in Greece and upon presentation of all prescribed documentation he is granted an ONE YEAR residence permit, that after the first renewal it is RENEWABLE EVERY TWO YEARS.

**A2. Seasonal employment**
Seasonal employment of third- country nationals is their employment in Greece for a period of up to SIX MONTHS, in a field of activity relating to temporary, seasonal employment.

**A3. Corporate executives**
Issuance and renewal of residence permits to corporate members of boards of directors, managers and staff.

1. The following persons shall be allowed to enter the country, having previously obtained a visa:
   a. Third-country nationals who are members of boards of directors, managers, legal representatives and senior executives (general managers, managers and deputy managers) of subsidiaries and branches of foreign companies lawfully practicing commercial activities in Greece;
   b. Foreign employees and legal representatives employed solely by companies that have come under the provisions of Law 3427/2005 (GG 312 A), Law 378/1968 (GG 82 A) and
article 25 of Law 27/1975 (GG77 A), as replaced by article 4 of Law 2234/1994 (GG 142 A), as well as by undertakings under legislative decree 2687/1953 (GG 317 A); c. Third-country nationals who are technicians employed in industries or mines under the terms provided for in Law 448/1968 (GG 130 A); d. Foreign personnel exclusively employed by companies established in Greece in implementation of article 26 hereof; e. Foreign specialized scientific personnel employed by foreign companies with branches or subsidiaries in Greece that lawfully practice commercial activities, as well as by companies associated with corresponding ones in Greece within the meaning of article 42e of Law 2190/1920 (GG 37 A), may travel to be employed in the branches or affiliates of the said company or in associates companies in Greece.

A4. Temporary travel for the provision of services
I. Issuance and renewal of residence permits to third-country nationals traveling from an undertaking established in a Member State of the European Union or the European Economic Area with the purpose of providing services
1. Third-country nationals lawfully employed in an undertaking established in a Member State of the European Union or the European Economic Area who must travel to Greece in order to provide a specific service, in the context of a relevant contractual commitment between the said undertaking and a party active in Greece shall be issued with a residence permit,
II. Issuance and renewal of residence permits to third-country nationals traveling from an undertaking established in out of the European Union or the European Economic Area with the purpose of providing services
According article 19 of Greek Law 3386/2005, temporary staying permit valid for 6 months is granted to a third country national, employee to a foreign non EU company, who comes to Greece to work to a company, with whom his employer cooperates.

A5. Athletes – Coaches
A6. Members of Artistic groups
A7. Intellectual creators
A8. Members of schools of Archaeology

B. Residence permits for economic activity
B1. Independent Economic Activity (art24)
1. Third-country nationals shall be allowed to enter the country in order to practice independent economic activity, provided that they meet all the following conditions: a. They have sufficient funds to practice the activity, amounting to at least sixty thousand euro (€60,000), which shall be deposited in an account in the name of the applicants with a recognized bank. After the issuance of the special visa, this sum shall be deposited in a corresponding domestic institution; b. The activity contributes to the growth of the national economy; and c. They hold a special visa.
B2. Development of investment activity (art26)
Third-country nationals may enter Greece in order to make an investment of at least three hundred thousand euro (€300,000), which shall have positive effects on national economy.

C. Residence Permits For Special Reasons
   C1. Studies
   Third-country nationals shall be allowed to enter Greece for studies at Universities, Technological Educational Institutes (TEIs), Higher Ecclesiastical Schools and Ecclesiastical School Units, Higher School of Teachers of Engineering Sciences of the School of Pedagogical and Technological Education (ASETEM/ASPETE), Higher School of Tourism Professions of the NGTO and Technical Vocational Schools (TEE), provided that they have obtained a visa. Studies include postgraduate studies. The concept of studies also includes the preparation cycle, if provided for by applicable legislation, as a part of such studies.
   C2. Vocational Training
   C3. Scholars - Special Programmes
   C4. Studies at Military Academies
   C5. Acquisition of medical Speciality
   C6. Financially independent persons
      1. The General Secretary of the Periphery grants staying permit valid for one year to a citizen of a third country, if the latter is granted special visa and has sufficient assets, in the form of an annual steady income, which covers the costs of his living conditions. The staying permit can be renewed every year, if the requirements set by the law are fulfilled. The citizen of the third country can be accompanied by his family members.
   C7. Adult children of Diplomatic Officers
   C8. Diplomatic delegations’ service staff
   C9. Foreign press correspondents
   C10. Ministers of known religions
   C11. Athonias Academy
   C12. Study of, acquaintance with and the practice of monastic life
   C13. Organized tourist group leaders
   C14. Researchers

D. Residence permits for exceptional reasons
   D1. Humanitarian reasons
   D2. Public interest
   D3. Trafficking victims

E. Residence permit for family reunification
   E1. Family members of a third country national
   E2. Autonomous residence permits for the family members of a third – country national
   E3. Family members of a Greek or EU citizen
F. Unfixed term residence permit

G. Long term residence permit

Long-term resident status shall be granted to adult third-country nationals who have resided legally and continuously within Greece for five years immediately prior to the submission of the relevant application. The right shall be personal.
EXPTS / IMPORTS/ CUSTOMS
How does the movement of goods take place among the countries of the European Union (E.U.)?

Upon the establishment of the Single Internal Market as of 1.1.1993 the customs control among the E.U. countries was abolished and the movement of goods and services is now freely implemented, subject only to the V.A.T. liability control. The intra-community trade is now designated as purchases and sales, while the terms import and export refer only to the extra-community trade. However, the customs control on exports and imports from and to the E.U. countries continues to exist and the customs document being used in all of the customs offices of the European Community is now called Single Administrative Document (S.A.D.). The S.A.D. is a customs document, it is filled up by the exporter or the importer, it is signed by them, it contains their full details, a full description of the comodity and the tariff heading and is accompanied by an invoice issued by them and mentioning the V.A.T. number and the full details of the purchaser of the commodity. The S.A.D. is called bill of entry or customs declaration and the declarant or the declarant’s lawful representative is obliged to know the references pertaining to the drawing up of the declaration, depending on the customs procedure to which these persons have asked for the goods to be subject, according to the provisions in force [Council Regulation (EEC) No 2913/92 and Regulation (EEC) No 2454/93]. According to the National Legislation [Law 718/1977] only the customs broker may act as the declarant’s lawful representative.

What is the Common Customs Tariff?

The Common Customs Tariff is the external tariff applying to goods being imported to the European Union. The rates of customs duties applying upon the imports of goods from third countries (countries outside the European Union) to the E.U.'s customs territory are specified in the E.U.'s Common Customs Tariff (Combined Nomenclature - Council Regulation No 2658/87, as amended). The aforesaid Common Customs Tariff is modified every year and it is published on the last day of October of the year preceding its effective date (http://eur-lex.europa.eu/el/index.htm). The amount of the customs duties charged for each commodity being imported to the European Union is determined upon the customs clearance by the competent customs office of import on the basis of “Tariff Classification” of the commodity in the aforesaid “Common Customs Tariff”, that is to say it is about finding the correct tariff subheading to which the commodity is subject and the customs duty rate corresponding to such subheading.

How will the importers or exporters concerned know, a priori, to which tariff subheading the product which is about to be imported or exported is subject?

They may apply to the competent customs authority (17th Directorate - Department A', Ministry of Finance) for being given a “Binding Tariff Information”. The legal base of the Community system pertaining to the provision of a binding tariff information made be found in the Community Customs Code (Regulation No 2913/92) and in its implementing rules (Regulation No 2454/93). The upgraded Community Customs Code
is comprised in Regulation No 450/2008/EC. Every binding tariff information binds the customs authorities of all of the E.U. member states over a period of 6 years following the date of its issue (http://www.gsis.gr).

Is there any E.U. database where the customs details/particulars of each case may be searched for?

It is the Integrated Customs Tariff of the European Union (TARIC) which is based on the Combined Nomenclature [both tariff-linked and statistical]. It is about a collection, in a codified manner, of the Community legislative provisions being published in the Official Journal of the European Union and pertaining to the customs duties/tariffs vis-à-vis third countries, to the tariff suspensions, to the tariff preferences, to the tariff quotas, to the antidumping duties and to the countervailing duties, as well as to other trade and agricultural policy measures of the E.U. The TARIC code numbers have ten digits. The DDS Data Base (Tariff Data Dissemination System) of the European Commission also provides the possibility of access, inter alia, to the E.U.’s Integrated Tariff (http://ec.europa.eu/taxation_customs/dds/home/el.htm).

How may one be able to know about the customs and tax charges applying to the import of a commodity from third countries?

The TARIC, in conjunction with the data of national taxation [Value Added Tax, Excise Duties and other dues], constitutes the Integrated Customs Tariff which is called National Customs Tariff.

The national taxation comprises the Value Added Tax (V.A.T.), the Excise Taxes and the other taxes which are imposed on the import of goods deriving from third countries (countries outside the E.U.), as long as they are about to be consumed in Greece. It is possible to carry out an electronic search for the national taxation, which is expressed through an additional national taxation code number in conjunction with the commodity code (http://www.gsis.gr/teloneia/synallages icis/taric.html).

How is the customs value defined?

The term customs value of the imported goods means the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community. To the customs value, apart from the invoice value, various amounts are added, such as transportation expenses, insurance premiums, commissions, royalties, etc. as far as the port of entry in the Community.

The “DV1 form” that pertains to the declaration of details relative to the customs value will be filled up and submitted to the Customs Authorities for the import of goods of a value larger than EUR 10,000.

Which are the documents and information that might be required on the part of the Customs Authorities for the determination of the customs value?

Without limitation, the documents which might be required by the customs authorities are as follows:
1) Commercial invoice for the commodity provided that the commodity has been sold,
2) A Sale Contract which will be produced as a supporting document for the invoice,
3) A Royalties Contract which will stipulate whether the payment of royalties should be comprised in the customs value and, if yes, to what extent,
4) An Agency Contract for the purpose of specifying any additional amount concerning commissions or brokerage expenses or for proving the exemption from the purchase commissions,
5) Documents relative to transportation and insurance pertaining to the goods and to the determination, inter alia:
   a) of the delivery terms (cif, fob, ex factory, etc.)
   b) of the expenses regarding the delivery to the place of entry within the customs territory of the Community,
   c) of the transportation expenses subsequent to the arrival at the place of entry
6) Accounting entries, mainly, of the importer or of the purchaser for the purpose of obtaining information in connection with commissions and profit or general expenses.

What is the difference between import and intra-community acquisition of goods?

As import of goods is regarded the entry, in the territory of the country, of goods deriving from third countries (countries outside the European Union). Such import of goods is objectively taxed, that is, the imported goods will be taxed even if the importer is a private individual and implements no financial activity.

As Intra-Community acquisition of goods is regarded the acquisition of goods that are sent or shipped to the acquiring party by the seller or by the acquiring party himself or by a person acting on their behalf, to the territory of the country from another member state from which the shipping or the transportation of the commodity departed. It will be taxed if the following prerequisites concur:
   a) the goods are transported to Greece from another member state,
   b) the acquiring party (the purchaser) is a taxable person,
   c) the seller must be a taxable person at another member state and must not exempt from taxation,
   d) the transaction must be implemented “ex causa onerosa” (for consideration),
   e) the transaction must be effected within the framework of the implementation of economic activity on the part of the seller and on the part of the buyer.

Which are the shipping documents?

During the movement of goods that constitute the subject matter of an international purchase/sale transaction the need arises for basic details of the goods to be certified, which is achieved through the issue of the following shipping documents: commercial invoice, transportation document, certificate of insurance, certificate of origin, EUR1 or ATR1 movement certificate, T2L Community transit procedure certificate.

Which are the necessary documents that shall have to be submitted for the implementation of the import of goods?

Imports may be effected by any individual or company to whom/which a VAT number has been allocated in Greece and on condition that he/it produces the following documents:
   1) Invoice issued by the foreign firm comprising a detailed description of the commodity, the unit price and the total value denominated in the foreign currency.
   2) Tally sheet or packing list
   3) CMR or bill of lading,
   4) Delivery order (ownership title for the commodity)
   5) EUR1, FORMA, ATR1 Certificates or a Certificate of Origin, as appropriate,
   6) Import approval, whenever is needed for certain categories of goods.

Which are the necessary documents to be submitted for the export of goods?

   1) Export invoice (without V.A.T.),
   2) Tally sheet or packing list
   3) Information regarding the registration in a special exporters register
4) Consignment note duly validated and designating the foreign customer as recipient and the customs office of export as place of delivery
5) Exporter's valid Registration Certificate regarding the exporter's membership in the Exporters Register of the Chamber of Commerce and Industry.

Which are the manners of settlement of the international sale/purchase transactions?
One of the most important matters which shall have to be agreed upon in an international sale/purchase transaction is also the manner of settlement of the value of goods. In order to minimise or even eliminate the risks pertaining both to the seller and to the buyer, specific manners of settlement of the value of the goods will be used which are of a uniform nature at an international level and are as follows: open account, documents against acceptance, documents against payment, documentary letter of credit, advance payment and barter agreement.

What INCOTERMS are?
They are internationally-recognised and valid terms of transfer of goods and transport risks and they usually constitute an integral part of every international contract for the sale of goods. The following seven terms (INCOTERMS) apply to all means of transport: EXW (ex works), FCA (free carrier), CPT (carriage paid to), CIP (carriage & insurance paid to), DAT (delivered at terminal), DAP (delivered at place), DDP (delivered duty paid).
In regard to the carriage by sea the following four terms exclusively apply: FAS (free alongside ship), FOB (free on board), CFR (cost & freight), CIF (cost, insurance & freight).
TAX
The fundamental rules of taxation in Greek law

The fundamental rules of taxation in Greek law are contained A) in article 4 §§ 1 & 5 of the Greek Constitution which read as follows: 4§1 “Greeks are equal as against the Law”; 4 §5 “Greek citizens contribute without discrimination to public fees depending on their powers” B) in article 78 §§ 1 & 2 of the Greek Constitution: 1) “No tax is imposed or collected without a formal law that sets the object of taxation, the income, the nature of property, the expenses or the transactions to which the tax relates to 2) Tax or other financial burden cannot be imposed with a law having retrospective effect, beyond the previous tax year of the year when the law is passed”; in other words, the legislator can only look at income produced one year back when imposing taxation. Relevant to the constitutional rule which requires a formal law for the imposition of tax is the fundamental principle that tax rules are narrowly interpreted.

The main categories of taxes in Greece

We can distinguish three basic categories of taxes in the Greek tax system: a) taxes on income; The main examples are tax on the income of individuals and tax on the income of legal persons (corporations). As a separate category of income tax, there is also taxation of ships. b) taxes on property/capital taxes, e.g. inheritance tax, tax on real property ownership. c) taxes on transactions or consumption taxes, e.g. V.A.T., tax on the transfer of real property, import duties, duties on the consumption of luxury goods, special duties on alcohol and tobacco, duties upon registration of private cars, duty on subscribers of mobile communication providers, e.t.c. Stamp duty, which is quite commonly charged in a list of transactions is also considered as a tax because it does not correspond to a specific provision of the State, i.e. it has no reciprocity. Subject to stamp duty are mainly certain contracts between individuals or businesses, certain dealings with the public sector etc.

The tax administration

The tax administration in Greece is a competency of the Ministry of Finance. The Ministry of Finance is divided into separate General Directorates (Administrative Support, Taxation, Tax Audits, State Property, Customs and Special Duties, Financial Inspection, IT Systems, Budget & Payroll). There is also the General Directorate of “S.D.O.E.”, which stands for “Body for the Combat of Economic Crime”. In the lower level of tax administration are the local tax offices and the local customs offices.

Local tax offices

Greece is divided into administrative areas and in each of them operate one or more tax offices that are called “D.O.Y.”. For the taxation of each individual, the competent tax office for the receipt, processing and clearance of tax returns is the tax office of his
area of residence. Exceptionally, for the taxation of professionals and sole traders the competent tax office is the tax office of the area where they exercise their business or profession. For individuals who reside abroad, there is a special tax office in Athens. Administrative acts issued to one taxpayer bear the signature of the Director of the local tax office. There are separate tax offices for S.A. companies. The latter are currently being abolished, so S.A. companies will fall under the supervision of local tax offices and large companies will be dealt with by a new department called “Tax Office for Large Companies”.

The administrative procedure in taxation

The administrative procedure in taxation is the whole procedure which takes place between the legislative enactment of a new tax until either the relevant tax is paid or until a court procedure is initiated by the taxpayer who seeks to challenge an administrative act of the tax authority. Although, as mentioned, the imposition of tax is strictly limited to the legislator, the identification of the persons liable to tax, the calculation of the exact amount of tax, the imposition of tax penalties or fines related to violation of tax legislation, and the administrative settlement of tax disputes are all competencies of the tax administration. In theory, the tax administration does not enjoy unlimited freedom in the exercise of its powers; there are strict formal rules that govern the procedure of issuing administrative acts imposing tax. To the same end is also the constant effort of the legislator, because the more formal the rules and the procedure, the less discretion will be left with the tax officials, which is considered as an aggravating factor for corruption and malpractice. In practice, however, the tax authorities have a certain degree of discretion, when, for example, they apply-interpret the degrees of severity in violations of tax laws.

Formal obligations of taxpayers

Most, if not all transactions in Greece involve a certain tax issue. In its attempt to combat tax evasion and tax fraud, the State in many occasions imposes obligations to individuals that are often strict, unfair and bureaucratic. The formalities involved in Greek tax legislation are in some cases extreme. Book-keeping is complicated even for small businesses and this is why even sole traders and small businesses or individuals with various sources of income have to get services from tax consultants or accountants in order to minimize their risk of missing out a formality.

- The obligation to obtain a tax registration number (A.F.M.)

In Greece, the tax identity of individuals and corporate entities is defined by a unique tax registration number which has nine (9) digits. This tax registration number is kept until death of the individual or until dissolution of the corporate entity. The uniqueness of a tax registration number is ensured by the fact that it is associated with numerous personal details of the tax payer, such as the ID number, the date of birth/incorporation, the residence address or corporate seat etc. All individuals and corporate entities who i) are liable to file a tax return; ii) declare the commencement of taxable activities; iii) acquire land or cars; iv) participate in partnerships or companies; v) represent other taxpayers before the tax authorities etc. are attributed a tax registration number. In all dealings with the tax authorities, the tax registration number is mentioned. It is also obligatory to mention the tax registration number in specific dealings between private parties, e.g. in contracts for the acquisition of land etc. Having more than one tax registration number is an administrative offence which incurs high penalties.
The obligation to file a tax return (tax declaration)
In order to define the tax liability of each individual or corporate entity, it is necessary that the tax authority is aware of data that are related to the specific individual. This relates to most forms of taxation. The most common form of tax return is the income tax return which is submitted annually by all taxpayers between March and June, and relates to the income of the previous year. A tax return is also filled for V.A.T. bi-monthly or every trimester, for taxes withheld by businesses on salaries and payments to subcontractors etc. Also, the tax legislation provides that certain transactions are invalid before the relevant tax is paid; for example in a transaction in real estate or upon transfer of shares, a tax return (declaration) will have to be submitted to the tax authority and the tax must be paid before the actual agreement is signed between the parties. A tax return may be submitted in hard copy or (in more and more cases) electronically. The State encourages taxpayers to file tax returns electronically (where possible) because they are less costly and quicker in processing and in that way the tax assessment is made immediately by the system. However, there are many categories of taxes that still have to be filled in person at the local tax office. In cases where the taxpayer is not sure whether he is subject to a tax or when in doubt about a specific element of the tax return, he can file a tax return “with reservation”, but such reservation has to be specific, otherwise it will be rejected by the tax authority. Corrections to tax returns are made by “corrective tax returns” that may be submitted under certain time limits.

Tax audits
The law allows tax authorities and tax officials to conduct tax audits in order to assess the correctness of the facts declared by the taxpayers and in order to assess their tax liability in general. For big companies there are special audit offices that cover wider geographical areas of Greece. Tax audits may be very brief and simple, like for example an invitation to the taxpayer to visit the tax office with evidence that support the facts declared in his annual tax return, or they can be very extensive and last for months, with more than one tax officers present at the premises of a business under inspection. As a separate audit force “S.D.O.E.” (Body for the Combat of Economic Crime) was established in 1995. S.D.O.E. has a joint competency with the competent tax offices for conducting inspections. It deals with more serious tax fraud and economic crime. It has very extended powers and can operate everywhere in Greece 24 hours per day and 7 days per week. S.D.O.E. operates like a tax-police and may have access to all information that facilitates its tasks. Recently, by law 3943/2011 a new force has been established in order to combat tax evasion and economic fraud, the Economic Crime Prosecutor. Its office is staffed with experienced tax, customs, and court officials, judicial clerks, financial experts etc. The Economic Crime Prosecutor has also extended authorities and the government has placed high hopes in its role for combating tax evasion.

Violation of tax rules
Due to the volume and the complexity of Greek tax legislation, it is practically very common for a taxpayer to be in breach of some tax provision, even unintentionally. The origins for the complexity is the effort of the State to combat tax fraud, but unfortunately, over the years it tends to create adverse effects in that respect. Apart from cases of accidental violation, there is of course a remarkable high level of intentional violation and tax fraud in Greece. Small scale intentional violation of tax laws may be attributed to the character of Greeks who adopt a friendly approach in day to day transactions and would excuse a contractor or supplier who does not issue an invoice
for his products or services. At the top level of breaches is the tax fraud, which is orchestrated by organized criminals who may profit millions of Euros by carousel fraud, customs fraud, violation of transfer pricing laws and other methods.

**Tax disputes**

After finishing the tax audit, the tax authority issues two documents: 1) the “tax audit report”, which is the analysis of the findings together with an explanation of the factual circumstances and the methodology followed 2) a so called “audit sheet”, which is the actual administrative act imposing additional taxes, fines, penalties etc. The audit sheet refers to the audit report for details of the findings, it is actually founded on it. The tax authority must then officially service the documents to the taxpayer. After delivery (service) of the documents, the taxpayer has a time-limit of 60 days to either 1) apply for an administrative settlement of the dispute 2) or challenge the act (audit sheet) before the administrative courts. The procedure for administrative settlement may be initiated also together with the filling of the court action. It is possible to reach a partial settlement and proceed with challenging the remaining items of the act of the tax authority.

**Challenging the acts of tax authorities before the courts**

As mentioned above, if a taxpayer seeks to challenge an act of the tax authority before the courts, the deadline is 60 days after official notification of the act by the tax authority. Tax cases fall within the competency of the administrative courts who have 2 degrees (Administrative court of first instance and administrative Court of Appeal). On legal grounds only, as a third recourse, a petition before the Council of the State can be filled as well. The action against the administrative act is called “recourse” and is filled before the administrative court of first instance. Following recent changes in the law, for cases the value of which exceeds the sum of €150,000, there is direct recourse to the Administrative Court of Appeal, and hence the taxpayers for those disputes are deprived of one degree of jurisdiction; this is heavily criticised as unconstitutional. 

The court action (recourse) seeks to annul or modify the administrative act, and may do so, or may reject the recourse and verify the act of the tax authority. The filling of a lawsuit automatically suspends 50% of the additional tax and/or penalty which is being challenged. So, after filling of the court action, the tax authority issues a “payment order” for 50% of the original amount provided in the “audit sheet” and, depending on the outcome of the case, after the court decision is publicised, will either refund the taxpayer or issue an additional payment order for the remaining 50% of the original amount. Suspension of the 50% upon filling of the court case is possible but it may only be ordered by the court, following a separate petition of the taxpayer for suspension, for which the court will look at the merits of the case and will only grant it where it sees that the taxpayer has obviously strong grounds to win the case. The tax authorities have equal rights for appealing against decisions. Special court proceedings may be initiated also at the level of administrative execution, i.e. where the recourse challenging the merits of the case is no longer possible.

**Some special issues in Greek tax law**

- objective methods in the imposition of tax

The Greek legislator, in order to combat tax evasion, has developed a number of objective methods in the calculation of income and the valuation of property. The most important examples of this approach can be found in income taxation of individuals
and in taxation of real property (possession and transfer). In the taxation of income of individuals, the law lists a number of expenses and of assets that prove “deemed income” of the taxpayer. So, for example, if a person declares income of €10,000 per annum they would not be able to justify the possession of a big house with a swimming pool. There is a table for calculating the income related to certain assets and expenditure, that are added up, so that if the taxpayer declares less income, he will be taxed on his deemed income according to his personal assets and expenditure. Similarly, in order to combat tax evasion in property transfers, the legislator, by virtue of law 1249/1982, introduced an “objective system” of land valuation. This system provides for a minimum value of real property according to objective criteria such as position, size, public facilities in the area, age of a building etc. It was imposed so that the tax authorities have a reference minimum value in imposing taxes related to land. In cases of transfer of land, the relevant taxes are calculated on either that “objective value” or the value agreed in the contract, whichever is the highest. The objective values are usually significantly lower than the market values, but recently the government, by virtue of regular updating, tends to bring them closer. Not all areas in Greece have been valued, so in some areas (mainly rural) the tax authorities estimate the value according to similar transactions or other available comparable data.

- **Tax amnesty laws**
  The complexity of tax laws, the bureaucracy of tax administration and the number of formal procedures and paperwork that taxpayers have to observe, have created over the years an immense number of tax files that have not been audited and also a huge number of cases pending before the tax courts. This situation results in the State failing to collect taxes from those cases and also to the fact that taxpayers are in a way “hostages” of an uncertainty regarding their tax obligations of the past. In order to tackle this problem, governments often pass amnesty laws by which the taxpayers have the opportunity to close the files of their past tax behaviour without audit, by paying an amount which usually relates to certain objective criteria. Amnesty laws are quite frequent but are highly disputed, not only in principle, but also in terms of their long term effectiveness. A taxpayer who has no violations in his record would be encouraged to participate in the amnesty procedure in order to avoid being audited (as said, it is very easy to be caught being in breach unintentionally); on the other hand, a taxpayer who has intentionally violated the rules in order to avoid tax, may pay the same amnesty fee and get away with it. Whenever passed, tax amnesty laws create controversy and criticism and although when announced, they are said to be the last ones to be passed, there is always another one coming.

**International aspects of Greek tax law**

The superiority of international treaties as against national Greek laws is clearly defined in article 28§1 of the Constitution, which provides that *international treaties since their ratification by law and their coming into effect, are an integral part of the internal legal order and supersede any contrary legal provision*. This rule applies equally in relation to tax laws, to the extent that they may be contradictory with an international treaty that Greece has signed with another country or countries. Reciprocity is a prerequisite for the application of international treaty rules to foreigners, as provided by the same article 28 § 1. Greece is a member of the European Union since 1981 and hence, all EU rules that relate to taxation are applicable. However, EU is far from having a full harmonization of the various national tax systems and hence, the effect of EU legislation in Greek tax law is mainly limited to the following areas:
i. the uniform application of V.A.T. rules.
ii. the abolition of import duties
iii. the non-discrimination between individuals and corporations because of their country of origin.
iv. the cross-border restructuring of companies and the treatment of parent-subsidiary payments
v. the mutual cooperation of tax authorities.

Greece is also a member of the OECD and has entered into treaties for the avoidance of double taxation with 53 countries*.

Most of the DTTs cover both income and capital taxes, but some cover only income taxes.

* up to the time of writing, U.S.A., U.K., Sweden, France, India, Italy, Germany, Cyprus, Belgium, Austria, Finland, The Netherlands, Hungary, Switzerland, Czech Republic, Slovakia, Norway, Poland, Denmark, Bulgaria, Romania, Luxemburg, Republic of Korea, Israel, Croatia, Uzbekistan, Albania, Portugal, Armenia, Spain, Georgia, Ukraine, Russia, Slovenia, South Africa, Turkey, Ireland, Latvia, Kuwait, China, Lithuania, Mexico, Egypt, Canada, Azerbaijan, Saudi Arabia, Morocco, Qatar, Serbia, Tunisia, Estonia, Malta, Iceland
What are the main taxable legal entities used in Greece for business purposes?

The following entities, which are subject to Greek income tax, are mainly used in Greece:

- Société Anonymes (AEs);
- Limited Liability Companies (EPEs);
- General Partnerships (OEs);
- Limited Partnerships (EEs);
- Greek branches of foreign companies.

What income tax rates are the above legal entities subject to in Greece?

Greek AEs and EPEs as well as Greek branches of foreign companies are subject to Greek corporate income tax at the rate of 20%. The payment of this corporate income tax does not extinguish the tax liability in Greece of the shareholders/partners in the event of distribution or of the head office in the event of repatriation of profits, given that the dividends or profits distributed or repatriated by AEs, EPEs or branches may be subject to Greek withholding tax (see below).

General and Limited Partnerships (OE and EE) are subject to Greek income tax at the rate of 25%. The payment of this income tax extinguishes the tax liability for all partners in Greece, Greek or foreign. The sole exception to this rule is when an OE or an EE have individual general partners that are at the same time administrators of the partnerships (for up to a maximum of three general partners with the highest percentages). In this case, ½ of the partnerships' profits corresponding to these partners (if such exist) is subject to Greek income tax at the rate of 20% at the level of the partnership. The payment of this income tax extinguishes the tax liability of the general partners for the income they received related to these profits. The remaining profits that have not been subject to Greek income tax at the partnership level are distributed to the general partners (who are at the same time administrators) free of tax to be taxed separately at their individual tax bracket.

Are profits / dividends distributed by AEs, EPEs and Greek branches subject to Greek withholding tax?

Dividends or profits distributed by AEs and EPEs are subject to Greek withholding tax at the rate of 25%. There may be two exceptions to this rule:

- An exemption may be granted when dividends are paid to a foreign parent company situated in another EU Member State, provided the conditions of article 11 of Law 2578/1998 apply (i.e. “Parent-Subsidiary” Directive 90/435/EEC), i.e. the
EU parent company has a participation of at least 10% in the AE or the EPE for at least two consecutive years.

- In addition to the above, shareholders and partners of AEs and EPEs who are tax residents of countries with whom Greece has signed double tax treaties should consult the provisions of such treaties to see if the treaties provide protection against Greek withholding income tax on the payment of dividends and profits. Profits remitted by Greek branches of foreign companies to their head offices (including crediting of such profits) are subject to 25% withholding tax. It should be noted that Greek income tax law does not provide for similar provisions, as those set out above for the Parent-Subsidiary Directive, explicitly exempting Greek branches from Greek withholding tax in the event of remittance or crediting of profits.

How do foreign companies acquire a Permanent Establishment (PE) in Greece?

According to the Greek income tax code a foreign company is considered to have a PE in Greece, if it is engaged in the following activities: (a) operating a shop, agency, branch, office, warehouse, factory or workshop, or an installation for the purpose of exploiting natural resources; (b) processing raw materials or agricultural products; (c) carrying out business or rendering services through an agent authorized to negotiate and conclude contracts in its name (dependent agent); (d) maintaining a stock of merchandise out of which orders are executed for its account; and (e) participating in a Greek partnership or EPE.

Notwithstanding the above, if the foreign company is a tax resident of a country with whom Greece has signed a double tax treaty, the foreign company should consult the relevant provisions of the respective treaty regarding PEs. All recent Greek tax treaties follow the OECD Model Convention, with necessary modifications to reflect special interests or situations. It should be noted that according to all double tax treaties, participation in resident partnerships and EPEs does not create a PE. Moreover, the use of Greek independent agents acting in the ordinary course of their business does not give rise to a PE in Greece.

What constitutes taxable income in Greece?

Taxable income is the net profit (before tax) generated in Greece and abroad, as set out in the company’s P&L Account. The financial information recorded in the P&L Account is extracted from the company’s accounting books and records, which are maintained according to the Greek Code of Books and Records (GCBR) or according to the International Accounting Standards (IAS) or the International Financial Reporting Standards (IFRS) if such have been adopted.

The taxable income is adjusted for Greek income tax purposes, taking into account the following: (i) tax-free income, such as dividends/profits received from Greek companies, (ii) income subject to special tax rules, (iii) expenses incurred for such income, (iv) non-deductible expenses (see below) and (v) differences in treatment between the GCBR and the IAS/IFRS if the company applies the latter.

What are the general principles for tax deductibility in Greece?

Expenses may be deductible for Greek income tax purposes provided the following general principles are satisfied. In particular, the expense must:
be productive (i.e. it must have been paid for the purpose of earning income);
be due, regardless if it has actually been paid;
be properly recorded in the company’s accounting books;
be properly supported by adequate documentation;
be recorded in the period to which it relates;
represent a contractual obligation arising from a genuine and valid agreement.

Does Greece have special tax provisions regarding transactions with companies abroad?

Payments made to suppliers for the purchase of goods or services, as well as interest, royalty and lease payments and all other expenses paid to individuals or entities situated or tax residents in countries considered by Greece to be “non-cooperating” or having “preferential tax regime” are not deductible for Greek income tax purposes, unless the Greek taxpayer can prove that the respective expenses relate to actual and ordinary transactions which do not result in the transfer of revenue, income or capital outside Greece for the purpose of tax evasion or tax avoidance. The burden of proof rests with the taxpayer.

“Non-cooperating countries” are considered those which on and after 1 January 2010 are not members of the European Union and have had not concluded with Greece and at least 12 other countries agreements regarding mutual administrative assistance. It should be noted that non-cooperative countries are determined by virtue of a decision issued by the Greek Minister of Finance, after having examined the fulfilment of the above conditions.

Individuals or entities (i.e. foreign, including EU) are considered to enjoy “preferential tax treatment” when (i) they are not subject to income tax in their country of residence, (ii) although they are subject to tax, they are not actually taxed, or (iii) they are subject to tax at a rate which is less than 60% of the respective Greek tax rate which would be applicable in the case they were residents or had their registered address or their PE in Greece.

Does Greece have special tax provisions regarding triangular transactions using intermediaries residing in foreign countries?

If a Greek company sells goods to a foreign intermediary situated or a tax resident in a country considered by Greece “non-cooperating” or having “preferential tax regime” (see above), without such goods being physically transported outside Greece and the same goods are resold by the intermediary to another company in Greece at a price higher than that by which the intermediary sold the goods, the difference between the purchase and sales price of the intermediary is added to the gross profits of the original Greek company.

Similarly, when a Greek company sells goods to a foreign intermediary in a country considered by Greece to be “non-cooperating” or having “preferential tax regime” at a price lower than that which the Greek company sells the same products to Greek or foreign companies, the difference in price is added to the gross profits of the Greek company.
Does Greece have thin cap rules?
Accrued interest arising from loans paid or credited to affiliated companies are deductible for Greek income tax purposes under the condition that the total amount of loans granted by the affiliated companies does not exceed on average and during the accounting period three (3) times the company’s net equity. Accrued interest corresponding to the amount that exceeds the above ratio is not tax deductible against the company’s revenue.

Does Greece have special transfer pricing rules?
Greek law has introduced specific rules regarding transfer pricing and transfer pricing documentation in order for Greek companies and branches to justify that the prices set between associated companies have been set at arm’s length. Specifically, all Greek companies and branches of foreign companies are obliged to justify the prices set for their intra-group transactions with full standardized documentation files. As concerns Greek transfer pricing rules, there are two different and autonomous processes according to which Greek companies have to comply with transfer pricing rules.

Ministry of Finance:
The Greek income tax code has new provisions regarding transfer pricing documentation. The new provisions apply to transactions effected during accounting periods with respect to which the income tax return should have been filed from 1.1.2011 onwards. According to the Greek Income Tax Code, transfer pricing documentation must be prepared for all intra-group transactions between the same entities exceeding €100,000. The information included in the transfer pricing documentation must always be updated on an annual basis. Such transfer pricing documentation must be made available to the competent tax authority in case of an audit, within thirty (30) days upon notification of the tax authority. Failure to maintain the necessary data or to submit them to the tax authority incurs a fine of 20% of the value of the intra-group transactions, for which the documentation obligation was not observed.

Ministry of Development:
From 2008 and onwards, it has become obligatory for Greek companies and branches of foreign companies to compile transfer pricing documentation in order to justify the arm’s length intra-group pricing. Furthermore, there is an obligation to submit a List of intra-group transactions with the competent authority of the Ministry of Development within four (4) months and fifteen (15) days from the end of every fiscal year for intra-group transactions that took place during the fiscal year. Failure to comply with these obligations incurs a fine of 10% of the value of the related intra-group transactions.

When are income tax returns filed?
AE, EPE and branches of foreign entities are obliged to file their tax returns by the 10th day of the fifth month following the end of their accounting year. General and limited partnerships are required to file their tax returns by 1 April of each year, unless they maintain double entry accounting books, in which case the tax returns must be filed within three and a half months following the end of their accounting year. If a company files its tax return without making the appropriate tax payment, it is considered not to have filed the tax return and, therefore, it is subject to all the consequences pertaining to non-filing.
Are any tax related certificates filed with the tax returns?
According to new tax rules, Greek companies which meet the requirements for an audit by certified auditors must file, together with their income tax return, a certificate (issued by their certified auditor) verifying the tax status of the company. In the event the certificate contains qualifications, the said company will qualify for a tax audit; otherwise, it may be subject to a tax audit if it meets the criteria determined by law.

Does Greek income tax law provide for advance taxes?
In addition to their annual income taxes, companies, branches of foreign companies and partnerships are also required to pay an amount equal to 80% (in the case of companies and branches) and 55% (in the case of partnerships) of the current year’s income tax as an advance tax against next year’s tax liability. Credit is given for the advance tax paid in the previous year and in the event of tax losses in the following year, the entity is entitled to apply for an income tax refund. The above mentioned advance tax rates are decreased by 50% for the first three accounting years.

When are income taxes paid?
Income tax and the advance tax are paid in 8 equal monthly installments. The first one is paid with the filing of the tax return and the remaining 7 are paid on the last working day of the following 7 months.

Are Greek companies allowed credit for taxes paid abroad?
Greek companies are allowed to deduct, for Greek income tax purposes, taxes paid abroad for foreign source income which is taxable in Greece. Moreover, in the case of dividends received by a Greek parent company from a foreign subsidiary abroad, the Greek parent company is allowed to receive a tax credit in Greece against its overall annual Greek income tax liability equal to (i) the taxes paid abroad at the subsidiary level and (ii) the taxes withheld, if any, upon the distribution of profits that are attributable to the Greek company’s income. The aforementioned tax credit is available for all corporate taxes and withholding taxes paid abroad by the subsidiary and all the subsidiary’s subsidiaries at all levels. In order for the Greek parent company to be able to receive the aforementioned tax credit, it must have a participation of at least 10% in the foreign subsidiary for at least two consecutive years.

Can Greek companies carry forward their tax losses?
Greek companies, partnership and branches of foreign companies have the right to carry forward and offset tax losses against taxable income of the five years following the accounting year in which they were incurred. Tax losses cannot be carried back. Greek companies that have branches abroad may offset losses incurred by their foreign branches only against profits arising from such foreign business interests; they may not offset such losses against profits arising from their business activities in Greece.

Does Greek tax law provide for group tax relief?
Greek income tax law does not provide for Group tax losses. Losses cannot be transferred within the group.
What taxation rules apply during the liquidation process?

For Greek tax purposes, liquidation is deemed to commence when a company is dissolved in accordance with Greek company law. Upon liquidation, the company is subject to income tax for the amount received by its shareholders in excess of the actually contributed capital and profits already taxed. The “actually contributed share capital” is the paid-in share capital of the company. Proceeds from the liquidation are not subject to tax if they represent return of capital or taxed reserves.

Are there special rules applicable to specific sectors?

There are special tax regimes applicable to specific sectors of business in Greece, as follows:

Tonnage tax: Profits derived by Greek companies from the operation of their own ships registered under the Greek flag are subject to a special tonnage tax which satisfies the income tax obligation of the ship owner and shareholder with respect to such income. Branches of Foreign Shipping Companies: Foreign shipping companies may establish a branch or an office in Greece under law 27/1975, whereby foreign shipping companies enjoy substantial tax benefits, including exemption from Greek income taxation. Offshore engineering and civil construction companies: Offshore engineering and civil construction companies carrying out projects outside Greece benefit, under certain conditions, from a complete tax exemption.
The main taxes imposed on individuals

The main types of taxation on individuals are income and capital taxes. Of course there are also many other forms of indirect taxes, mainly on transactions and consumption. Income taxation is the most important tax that affects individuals. The two main categories of capital tax are tax on inheritance/gifts inter vivos/lottery gains and tax on the transfer of real property. In the present chapter we deal only with 1) income tax 2) tax on inheritance/gifts inter vivos/lottery gains; the taxation of real property transfer is dealt in chapter 17 of this guide.

INCOME TAX ON INDIVIDUALS

Who is subject to income tax in Greece?

Greek income tax is imposed to a) any individual who has his permanent residence or usual place of domicile in Greece b) any individual, regardless of his permanent residence or usual place of domicile, for his income which is produced in Greece. Usual place of residence is deemed to exist when an individual resides in Greece for above 183 days in the same calendar year. Public servants that work in a Greek public authority abroad and employees of the institutions of the EU are also subject to Greek income tax. Exceptionally, an individual who has its permanent residence or usual place of domicile in Greece may be taxed in Greece only for income produced in Greece under the condition that the same individual is taxed for its worldwide income in another country with which Greece has not entered into a Double Taxation Treaty and that that other country is not listed as a tax haven (definition of tax heaven according to article 51A of the Income Tax Code).

Which income is subject to taxation in Greece?

Subject to tax is the total net income that is produced in Greece or abroad, by any individual who is subject to Greek income tax (article 1 of the Income Tax Code – Law 2238/1994). The income which is taxed is the sum of income from all sources, after deduction of certain recognised expenses related to that income. The sources of income are categorised in the Greek Income Tax Code (I.C.T.) as follows:
A-B income from real property
C. Income from financial instruments/mobile values
D. Income from business activities
E. Income from agricultural activities.
F. Income from salaried services
G. Income from services of liberal professionals and any other sources.
Loss by one source may be set off against profit from another, and if it cannot be set-off, it may be carried forward for 5 years, under certain conditions. Loss from abroad may only be set-off against income from abroad.

**When is tax imposed?**

Tax is imposed in every financial year for income produced during the previous financial year. The financial year is the period between 1st of January and 31st of December of the same calendar year (article 3 of the ICT).

**What are the currently applicable tax rates?**

The total declared or deemed income of the individual is taxed according to the following table:

<table>
<thead>
<tr>
<th>Income range (€)</th>
<th>Tax rate (%)</th>
<th>Tax (€)</th>
<th>Total income (€)</th>
<th>Total tax (€)</th>
</tr>
</thead>
<tbody>
<tr>
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<td>0</td>
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<td>5.000</td>
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</tr>
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<td>4.900</td>
<td>40.000</td>
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</tr>
<tr>
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<td>7.600</td>
<td>60.000</td>
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</tr>
<tr>
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<td>16.000</td>
<td>100.000</td>
<td>32.420</td>
</tr>
<tr>
<td>Above 100.000</td>
<td>45</td>
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</tbody>
</table>

**What are the most important tax benefits-exemptions?**

Individuals up to the age of 30 and above the age of 65, enjoy a higher tax free zone of €9.000, provided that their total annual income does not exceed the amount of €9.000. In order to enjoy the tax free rate, every tax payer must show expenses of at least 25% of their total declared income and up to income of €60.000. For each of the first and second child, the taxpayer benefits from €2.000 added to his tax free range; for the third and next child €3.000 are added to the taxpayer’s tax free range. The tax is reduced by 10% of the total amount of medical expenses paid by the taxpayer, the full amount of rent paid for its main residence if he has no other property in its name, 50% of the amount paid to old-aged homes, interest for loans for the acquisition of main residence, insurance premiums, expenses made for the energy consumption improvements to houses, social security contributions e.t.c. Some of these deductions may not be available for individuals residing abroad. Income from real estate rental is subject to an additional tax of 1.5%. If the residence of the tax payer is larger than 300 square metres, the applicable tax rate is further increased by 3%. Tax paid abroad to a country with which Greece has signed a D.T.T. is set off against the tax obligation in Greece. There are certain motives that relate to the development of small islands (with 3,100 or less inhabitants).

**Taxation for income which is deemed according to objective criteria.**

Due to the extent of tax evasion in Greece, the Greek tax system has adopted a method of calculating the tax obligation according to certain objective criteria. If, after
application of those objective criteria, the deemed income of the taxpayer is higher than the declared income, he will be taxed according to its deemed income. Deemed income is calculated after taking into account the following objective criteria:

a) the surface of the main residence of the taxpayer in combination with its tax value

b) the surface of the secondary residence(s) of the taxpayer

c) the size of the engine of the taxpayer’s car(s) (i.e. 1.200, 1.400 cc etc.) in combination with the year of the car’s production.

d) Salary for house maids and other staff.

e) Fees for private schools for the taxpayer’s children

f) Leisure boats

g) Airplanes

h) Swimming pools

Purchases of cars, motorcycles, boats, airplanes and other goods that cost above €5.000 are taken into account in the calculation of the taxpayer’s annual deemed income (one-off). The taxpayer can, under certain conditions, cover the difference between actually declared income and income that is deemed after application of the above rules, by showing that the amount in excess of the declared income is justified by savings made from income taxed in previous years.

The obligation to file a tax return

The obligation to file a tax return is linked to a minimum annual income of €3.000 (€6.000 in cases of salaried employees). In some cases, for example, if an individual buys real estate or has income from land above a certain threshold, owns a car, a leisure boat, an aircraft, exercises a liberal profession or owns a business, the obligation to file a tax return does not depend on a minimum amount of annual income. Tax returns are filled between March and June each year. The husband has an obligation to file a common tax return in which is also declared the income of his wife. The tax return is a binding declaration for the taxpayer but may be corrected under a time limit. If a taxpayer has doubts as to the content of an item of the tax return, he may express a reservation, which must be detailed and specific, otherwise it is rejected by the tax office. Tax returns may be filled in hard copy (the form is sent to all taxpayers by post) or electronically. On hard-copy submission, the taxpayer hands the tax return in person or by post and encloses all documentation which is relevant to its income, tax withheld, expenses made etc. Upon electronic submission the documentation is not submitted to the system but should be available for inspection by the tax auditors at any time. Permanent residents in Greece who re-domicile abroad and foreigners who gain income taxable in Greece, before their departure, must file a tax return and pay the relevant tax. The director of the competent tax office may at his discretion request a guarantee for the amount of tax to be paid by the individual who leaves the country as above. The individual in question may, upon approval of the tax auditor, appoint an individual who is a permanent resident in Greece as his representative and guarantor for the fulfilment of his tax obligations.

Clearance of the tax return - tax audit

When the submission of the tax return is made electronically, the tax is cleared by the electronic system upon submission. When the tax return is filed manually in hard copy,
the clearance is made by the tax officers who also conduct a brief check of the tax return. After the clearance is made, the tax office issues a tax statement, which can be a credit or a debit note to the taxpayer and in some cases “zero”. The administration can review the tax return by conducting an ordinary tax audit, during which it may come up with different tax obligation for the taxpayer than what the taxpayer declared with his tax return. The right of the State to conduct an audit is subject to a prescription period of 5-15 years depending on the case (e.g. whether a tax return has been filed or not), but it is very common that the prescription period is extended by law, because of the workload of the tax authorities.

Withholding of tax

In most categories of income, there is a provision for withholding of tax. Upon distribution of dividends and other payments by companies to its shareholders, directors and employees there is a 25% withholding tax. If the total income of the taxpayer does not reach the tax scale of 25% there may be a refund of the tax paid. Salaried employees are also subject to withholding tax on their salary. The employer must calculate what would be the annual income of the employee taking into account the salaries and all related benefits and accordingly must deduct the amount of tax that relates to each monthly payment. Also, in payments of liberal professionals (lawyers, doctors, private teachers, notaries etc), when the payment is made by businesses or by other liberal professionals, there is an obligation to withhold tax @20%. The person who is obliged to withhold tax (e.g. employer, customer of the taxpayer etc) has a relevant obligation to produce a certificate of withholding of tax to the taxpayer, so that the latter submits it to the tax authority together with the tax return or upon request of the tax auditors.

TAX ON INHERITANCE/GIFTS INTER VIVOS/LOTTERY GAINS

According to article 1 of Law 2961/2001 (The Code on taxation of inheritance, gifts inter vivos and lottery gains), tax is imposed to any asset acquired by inheritance, gift inter vivos and winnings in lotteries, whether acquired by an individual or a corporate entity.

Inheritance tax

In article 3 of the Code, the legislator provides for a list of assets that are subject to inheritance tax. These are:
1) property of any kind situated in Greece which belongs to Greek citizens or foreigners.
2) moveable property situated abroad which belongs to a Greek resident or (under conditions) to a foreigner residing in Greece.

Liable to pay the inheritance tax is the recipient of the assets (beneficiary) and in case where there is more than one, the obligation is divided by analogy. The tax obligation is born upon death of the testator. However, there are various cases where the tax obligation is born at a later point, e.g. in cases where the inheritance is subject to a condition, in cases where the succession is being disputed in a court of law, where the estate is denounced by the successors, in cases where an administrator is appointed to administer the estate etc. The tax obligation may be postponed also by a decision of the director of the relevant tax office following a reasoned application of the taxpayer. The Code provides for different ways of calculation of the taxable value depending
on the type of asset. For real estate, the evaluation is made according to the objective method which applies to taxation on real property transfer. For stocks and shares, the value which is taken into account is the value of the asset one (1) day before the death of the testator. Shares and parts in non-listed companies are valued according to a special method which is used for the evaluation of such companies, which method takes into account the profits, turnover and other financial data of the past five (5) years. Furniture are valued at 1/30th of the value of the real estate where they are located; both the tax authority and the taxpayer have the right to challenge the value. Sums that remain in joint bank accounts and the value of items that are placed in safes are split equally between the beneficiaries of the account/safe; the tax authority and the beneficiaries may prove a different way to split the value between the beneficiaries. The beneficiaries of an estate may avoid the payment of tax by transferring the assets to the State. Debts and charges to the estate as well as certain expenses (e.g. funeral expenses) are deductible from the value of the estate. Tax-payers are classed into 3 categories depending on their proximity with the deceased. In category A’ belong a) the spouse b) the partner who has a contract for co-habitation according to the provisions of law 3719/2008, provided that the partnership was in existence at the time of death and it lasted at least 2 years c) the children d) the grandchildren e) the parents. In category B’ belong a) the great-grandchildren et seq., b) the grand-parents and great-grand parents c) the voluntarily or judicially recognized children as against the parents of the father who recognized them d) the children of a recognized child as against the father who recognized them and his parents e) the brothers and sisters f) the collateral relatives of third degree g) stepfathers and stepmothers h) children of the spouse from a previous marriage i) brothers-sisters-fathers and mothers in law. In category C belong all the rest of the relatives and aliens. Tax is calculated according to the following table:

<table>
<thead>
<tr>
<th>VALUE IN €</th>
<th>TAX RATE %</th>
<th>TAX</th>
<th>TOTAL VALUE</th>
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<table>
<thead>
<tr>
<th>VALUE IN €</th>
<th>TAX RATE %</th>
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<th>TOTAL VALUE</th>
<th>TOTAL TAX</th>
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<td>-</td>
</tr>
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<td>20.000</td>
<td>300.000</td>
<td>23.500</td>
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<th>VALUE IN €</th>
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<td>13.200</td>
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</tr>
<tr>
<td>195.000</td>
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<tr>
<td>ABOVE</td>
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</table>
Heirs have an obligation to file a tax return within 6 months after the date of death or after the publication of the deceased’s will, if there is one. If, at the time of death, the deceased or the heirs reside(s) abroad, the deadline is 12 months accordingly. The deadline may be extended for up to 3 months following an application of the tax payer to the relevant tax office.

**Taxation of gifts *inter vivos***

In principle the same provisions apply to gifts *inter vivos* as with inheritance tax. As an exception, by virtue of law 3842/2010 monetary gifts *inter vivos* are taxed @ 10% when the gift is given to a relative of category A, 20% for category B and 40% for category C.

**Taxation of winnings from lottery games etc.**

Winnings from lottery games, games of chance, instant lotto, football betting etc. are taxed at a flat rate of 10%. The person who wins is liable to pay the tax. The payer of the amount has an obligation to file a tax return declaring the sum and the beneficiary within 30 days from the day the lottery took place or the results of the relevant game.
VALUE ADDED TAX (VAT)

When was VAT introduced in Greece for the first time?
VAT was introduced in the Greek legislation by l. 1642/1986 “On the application of value added tax and other provisions”, which entered into force on 1st January 1987, in replacement of turnover tax and other indirect taxes and today constitutes the Greek VAT law, following its codification by l. 2859/2000 and further amendments in conformity with the EU VAT Directives.

What are the main characteristics of VAT?
VAT is a general, consumption tax assessed on the value added to goods sold and services provided within the European Union. It applies to all stages of production and distribution of goods, provision of services and intra-community acquisitions or imports of goods from abroad, against a consideration. The tax is borne by the end consumer of goods and recipient of services, whereas the VAT incurred on purchases and/or receipt of services (input VAT) may be offset against the VAT charged by the taxable persons on sales performed or services provided by them (output VAT). Any difference is payable to or recoverable from the Tax Authorities.

Who is a taxable person from a VAT scope?
For VAT purposes, taxable person is any individual or legal entity (partnership, enterprise etc.), established either in Greece or abroad, provided that they are independently engaged in an economic activity within Greece, any individual who performs on an occasional basis the supply of new means of transportation to another EU member state, as well as any individual who performs on an occasional basis supply of new buildings (building license issued after 1.1.2006).

Who is exempt from VAT?
Any company with small business activity and with an annual turnover of up to 10,000 Euros from delivery of goods or up to 5,000 Euros from supply of services is exempt from VAT. The exemption does not apply with regard to freelancers, wholesalers and exporters.

What is the taxable amount?
The taxable amount for VAT purposes is the consideration which has been received or shall be received by the supplier of goods or services from the purchaser/customer. In respect of imports of goods, the taxable amount is the customs value increased by customs duties and other secondary expenses (packaging, insurance, transportation costs etc.)
What applies in regard of intra-community supply of services?
As of 1.1.2010, the VAT charged on services is paid where the service has been supplied, which in most cases is the place where the recipient of the service (taxable person) is established, while in case of supply of services to a non-taxable person, VAT is paid in the place where the supplier of the service has his business establishment. The above general rule is subject to certain limited exceptions depending on the nature of the service provided.

Which transactions are exempt from VAT?
VAT exemptions may either preclude the recovery of input VAT or not (zero-rating). Examples of the first category of exemptions are the provision of services of a social or cultural nature such as medical services, educational services and insurance services. Examples of the second category include export transactions, international transit of goods, and transactions related to shipping and the aircraft sector.

What are the current applicable VAT rates in Greece?
The standard VAT rate is currently 23% as of 1.7.2010. There are also two reduced rates of 13% and 6,5%. All islands of the Aegean Sea except for Crete have reduced by 30% VAT rates which are 16%, 9% and 5%.

When does VAT liability arise?
In principle, tax liability is born and VAT is due at the time when the supply of goods or services is made. In certain cases VAT is due at the time of issuance of the relevant invoice. In the case of imports, tax liability arises when the goods enter into the Greek territory and in regard of intra-community acquisitions VAT is due at the time of issuance of the relevant tax invoice and on the 15th day of the month that follows the month when intra-community acquisition was performed at the latest.

When should VAT returns be filed?
Taxable persons are obliged to file monthly or quarterly (periodic) VAT returns depending on the type of books they are required to keep for accounting purposes and on specific dates provided by law. An annual return should be filed within four months and ten days or one month and twenty five days as from the end of each financial year, also depending on the type of accounting books kept.

How should VAT returns and payments be processed?
VAT monthly and annual returns are filed physically to the competent Tax Authority or electronically via the integrated tax information system “TAXIS” again depending on the type of accounting books kept. The filing of VAT returns is followed by the payment of the relevant VAT amount due. Payment may be performed either in full or by 40% and the remaining 60% increased by 2% up to 2 equal monthly instalments.

What is VIES?
VIES is the VAT Information Exchange System between the tax administrations of the EU member states aiming at monitoring and control of commercial transactions taking place within EU between VAT registered companies. Taxable persons can verify the validity of a
VAT number of another EU member state through the “VIES VAT number validation” page on the European Commission website (http://ec.europa.eu/taxation_customs/vies).

What is “listing”?
Taxable persons involved in intra-community supplies and acquisitions of goods and services are obliged to file monthly lists (Recapitulative Statements) including the VAT identification numbers of each of their suppliers or customers, as well as the value of the relevant transactions of the specific period. Furthermore, in case of intra-community supplies and acquisitions of goods exceeding a specific exemption threshold, taxable persons must provide statistical data through either paper or electronic filing of monthly Intrastat declarations with regard to such transactions.

How can input VAT be deducted?
Taxable persons are entitled to deduct input VAT from output VAT, as long as the goods purchased and services received are used in taxable transactions within the same tax period (one or three months depending on the type of accounting books kept). If input tax is higher than output tax at the end of the tax year, such difference may be either carried forward or refunded if certain conditions are met.

What are the interest and penalties provided in case of non payment of VAT?
The interest provided by law in case of late filing, inaccurate filing or non-filing of a VAT return is 1,5% (maximum 60%), 3% and 3,5% (maximum 120%) per month respectively, calculated on the amount of VAT that was not paid to the State. In case of administrative or court settlement the above extra tax is reduced to 3/5. Moreover, serious criminal penalties are provided by law in case of VAT evasion.

What applies for non-residents?
In principle, non-residents performing taxable transactions in Greece from a VAT scope, are treated in the same way as taxable persons established in Greece. If a non-resident opts to be established in Greece, he should register with the competent Tax Authority for VAT purposes. If he is not established in Greece (notwithstanding the fact that taxable persons established in another EU member state are directly held liable for any tax obligation in the Greek territory) according to the Tax Authorities he is still in practice required to appoint a tax representative.

When a non-resident can ask for a VAT refund?
Taxable persons established in another EU member state may claim a refund of the input VAT that was paid for goods purchased or services received in Greece as long as they do not perform supplies of goods or services in Greece, unless if they provide transportation services or services for which the recipient accounts for VAT under the reverse charge mechanism. Application for VAT refund is filed electronically by a non-resident to the member state of his establishment and then is forwarded to the member state of refund.

When should a VAT representative be appointed?
Any taxable person who has his business establishment outside Greece, however performs taxable transactions in Greece is required to appoint a VAT tax representative.
In regard of non-residents established in another EU member state, such obligation was typically abolished with l. 3453/2006, however the relevant provision has not yet been implemented in practice (see above).

**CAPITAL CONCENTRATION TAX**

**What is capital concentration tax and when was it imposed in Greece for the first time?**

Capital concentration tax was imposed in Greece on 1.1.1987 with articles 17-31 of l. 1676/1986, in implementation of Directive 69/335/EEC “concerning indirect taxes on the raising of capital”, as later supplemented and amended by other Directives. The capital concentration tax is 1% on the contributed capital.

Such tax applies to certain types of accumulation of capital specifically provided by law, in replacement of stamp duty. Capital concentration tax represents an expense for the companies and is deductible for tax purposes.

**Who is subject to capital concentration tax?**

Any commercial company, which is established in Greece and has a profit-oriented scope (partnerships (OEs, EEs), Societes Anonymes (AEs), limited liability companies (EPEs), foreign branches etc.). Individuals, freelancer professionals and state organizations/bodies governed by public law are not subject to such tax.

**When does capital concentration tax apply?**

Capital concentration tax applies in the following cases:

- Establishment (formation) of a company in Greece
- Capital increase of companies
- Increase of company assets
- Increase of capital due to merger of a company not subject to capital tax with a company subject to such tax
- Increase of capital due to conversion of a company not subject to capital tax into a company subject to such tax
- Divisions of a company
- Loans of a specific type (the lender has the right to participate in the company's profit)
- Contribution of assets or working capital to a Greek branch by a foreign (non-EU based) company.

**Which transactions and companies are exempt from capital concentration tax?**

Agricultural co-operatives, shipping companies, as well as public utilities companies and educational and philanthropic organizations, on the condition that half at least of their capital is owned by the Greek state or the Municipal Authorities, are exempt from tax. Capital increase by means of capitalization of profit, retained earnings or reserves is exempt from capital concentration tax.

**When is it due?**

In case of company establishment, transformation or merger, the relevant tax return is filed within fifteen (15) days as of the drafting of the relevant legal document.
case of capital increase, the 15-day deadline counts as from the date of drafting of the document confirming that increase has been effected.

**STAMP DUTY**
Stamp duty is levied on a limited number of transactions, documents and contracts, in the form of a percentage on the value of the transaction, which are not subject to VAT. The most notable cases where stamp duty applies are the following:
- A 3,6% stamp duty applies exclusively to commercial (and not residential) property leases.
- Private loan agreements are subject to a 2,4%-3,6% stamp duty depending on the contracting parties.
- Commercial loan agreements are subject to a 2,4% stamp duty.
- Cash withdrawal facility granted to shareholders and partners is subject to a 1,2% stamp duty.

**REAL ESTATE TRANSFER TAX**
**Which transactions are subject to real estate transfer tax?**
Such tax applies on the purchase value of land and buildings against a consideration, except from the first sale of new buildings where VAT applies (building license issued after 1.1.2006).

**What is the taxable value and the tax rate?**
The tax is imposed on the higher value between the objective value and the market value of the property sold and is borne by the buyer.
The rates are two: 8% on the transfer value up to 20.000 Euros and 10% on the excess value. The amount of main tax is increased by a municipality tax at a rate of 3%.

**SALES OF LISTED SHARES**
According to l. 2579/1998, sales of shares listed on the Athens Stock Exchange or any other recognized stock exchange market, acquired up to 31.12.2011, are subject to 0,2% transaction tax. Capital gains resulting from the sale of listed shares acquired as of 1.1.2012 and onwards, will be subject to tax according to the general income tax provisions.

**INSURANCE PREMIUM TAX**
Insurance tax applies on the amount of premiums and related costs charged by insurance companies and is borne by the customers. The rates vary from 4% to 20% depending of the type of insurance. Certain exemptions apply for some types of insurance.

**CONTRIBUTION OF L. 128/1975**
An annual contribution of 0,6% is imposed on the average outstanding monthly balance of each loan granted by a bank operating in Greece or abroad. Certain exceptions apply in regard to loans between banks, loans to the Greek State, loans funded by the European Investment Bank etc.

**COMPETITION COMMITTEE DUTY**
According to l. 2837/2000, a duty of 0,1% is imposed on the capital upon incorporation or capital increase of Greek Societes Anonymes (AEs) in favour of the Greek Competition Committee.
VEHICLE CLASSIFICATION DUTIES
Cars, motorcycles and trucks - either new or second-hand - that enter the Greek territory are subject to classification duty at a rate varying from 5% to 50% on their wholesale price, depending on the cylinder capacity of the car’s engine.

EXCISE DUTIES-LUXURY TAX
Excise duties on tobacco products, alcohol and alcoholic drinks and fuels (heating and transportation) are imposed in line with EU law.
A special luxury tax is levied on certain categories of goods, considered as “luxury goods”, such as luxury passenger cars, leather goods, jewellery and precious stones, precious metals, aircrafts, seaplanes, helicopters of private use, boats and other vessels intended for recreational purposes. More specifically, for luxury cars the rate of the said tax ranges from 10% to 40% depending on the manufacturer’s wholesale price.

CUSTOMS DUTIES
Imports from EU Member States are exempt from all customs duties. Imports from countries outside EU are regulated by the Community Customs Code, the Common Customs Tariff and the Greek Customs Code, in line with Community customs legislation.
MONEY LAUNDERING

Introduction

Law 3691/2008 incorporates the main provisions for the prevention and suppression of legalization of proceeds from criminal activities and financing of terrorism. To this end, this law of criminal – punitive character (and as such to be strictly interpreted) establishes a mechanism of control – supervision of the market, which is accompanied by several obligations as well as administrative and criminal sanctions/penalties.

Criminal activities

The criminal activities (predicate offences) the proceeds of which should not be legalized are, amongst others, the following:

- Crimes that usually have an international dimension such as: participation in an organized criminal group, sexual exploitation and trafficking in human beings, offences related to narcotic drugs, terrorism,
- Crimes of corruption such as: bribery of judges, bribery of foreign civil servants or of employees of the EU,
- any other offence generating any type of economic benefit, punishable by imprisonment of more than six months,
- Tax evasion.

Predicate offences must be committed either in Greece or in another country, provided that in the latter case, such activities (a) would qualify as predicate offences if committed in Greece and (b) are punishable offences according to the law of such other country. Law 3691/2008 regulates only the legalization of proceeds from the criminal activities characterized as predicate offences and not the offences as such, since these are governed by special Criminal Law provisions.

Activities for the legalization of proceeds (money laundering)

The following actions qualify as money laundering:

- the conversion or transfer of property deriving from criminal activities, aiming at the concealment or disguise of the illicit origin of the property,
- the concealment or disguise of the truth, as it concerns the nature, origin, transfer, movement or use etc of property deriving from criminal activities,
- the acquisition, possession, administration or use of property, knowing, at the time, that such property derives from criminal activities,
the utilization of the financial sector (by placing therein or moving through it proceeds from criminal activities) for the purpose of lending false legitimacy to such proceeds,

- the setting up of organization and the participation in such organization for committing one or more of the acts defined above.

Prevention of legalization of proceeds

Establishment of a prevention mechanism, consisting especially of:

- Obligated persons: credit and financial institutions, accountants, auditors, tax consultants, notary publics, lawyers, real estate agents, merchants of goods of large value etc, who inter alia are obliged to have sufficient knowledge of the identity of their clients and the nature of their transactions and inform the competent Committee in case of suspicious transactions,

- Competent Authorities: the public authorities which supervise and instruct the above obligated persons (depending on the persons' sector) regarding the implementation of the provisions of the law, such as the Bank of Greece, the Capital Market Committee, the Ministry of Finance etc.

- Committee to combat legalization: the Committee which collects, researches, evaluates the information addressed to it and commences the procedures, including forwarding the case to the Public Prosecutor.

- Further, the following bodies are provided with a coordinating, policy planning or consulting role: 1) Central Coordinating Authority and 2) Committee for the Processing of Strategy and Policies, at the Ministry of Finance. Finally, a special private sector Consultation Body is established with the participation of representatives of the obligated persons.

Obligations of obligated persons

- Measures of due diligence
  Due diligence (usual, simple or increased depending on the degree of danger of both the clients and the transactions) consists mainly of the provision of information regarding the identity of the client and the actual nature of the transaction. Special care is taken for bearer accounts, casinos, legal entities established in a non reliable third country, transactions without the presence of the client, cross border relations of correspondent banks, politically sensitive persons (state leaders, members of parliaments, high ranking civil servants etc.)

- Report and provision of information obligations
  The obligated legal entities are obliged to inform with their own initiative immediately the Committee for the Combat in case they know or have serious evidence or suspicions that legalization of proceeds or financing of terrorism takes place, is attempted to take place, has taken place or has been attempted to take place. They also have the same obligation for provision of information in case they are requested to do so by the competent authorities. The above persons are forbidden from informing the client involved or third parties that information has been forwarded or requested.
Maintenance of records and data
The obligated persons are obliged to maintain for a period of five years certain important documents which are provided for by the applicable legislation and relate to their clients and their transactions.

Suppression of money laundering

- The person liable for the acts of legalization of proceeds derived from criminal activities is punished with imprisonment which can exceed 10 years and with pecuniary sanction up to EUR 2 million.
- The employee of an obligated legal entity who fails to duly report suspicious or unusual transactions or activities or presents false or deceptive data is punished with imprisonment up to 2 years.
- Assets deriving from a predicate offence or money laundering or which have been acquired directly or indirectly from such offences are obligatorily confiscated by virtue of the condemning decision.
- The State can request from the person condemned for a predicate offence or for money laundering action any other assets he acquired from another predicate offence or any other money laundering action.
- During judicial investigation of money laundering offences, bank transactions or transactions in securities or financial products maintained with any credit institution or organisation can be forbidden. Further, the restriction of the sale of certain real estate owned by the defendant can also be ruled out.
- Finally, administrative sanctions can also be imposed on legal entities which have acquired financial profit from criminal activities as well as on companies of the financial sector which infringe their obligations.

TAX EVASION

Introduction
Tax evasion, in a broad sense, could be defined as the methodical avoidance of the proper payment of the taxes imposed by law. This paper deals with tax evasion in a strict sense, i.e. with actions that are criminally sanctioned and which according to Law 3691/2008 mentioned above may be treated as predicate offences in order to investigate money laundering cases. The main legislative framework that is applicable to tax evasion is Law 2523/1987 as well as the provisions of the Criminal Code and the Code of Criminal Procedure.
It should be noted that apart from the criminal sanctions that are applicable, other administrative penalties may be applicable in cases of violation of tax and customs legislation, such as imposition of additional taxes and fines, placement into custody, freezing of accounts, prohibition of certain transactions etc. These administrative penalties may be imposed irrespective of the imposition of criminal sanctions and in many cases they are imposed in parallel.
**Tax Evasion offenses**

The main tax evasion offenses are the following:

- Omission of filing or filing of false income tax return,
- Non remittance or incorrect remittance of VAT and other withholding taxes and duties,
- Issuance and receipt of false, fictitious or falsified tax records as well as the infringement of the rules of the Code of Books and Records,
- Non-payment of debts owed to the State and third parties,
- Smuggling

**Omission of filing of filing of false income tax return**

- Anyone who, in order to avoid paying income tax, fails to submit a tax return or submit false tax return, concealing net income from any source of income, is committing a tax evasion offence, provided that the tax attributable to the net income that is not declared exceeds for each accounting period the amount of fifteen thousand (15,000) euro.

- By way of concealing net income, the law also covers cases of fictitious expenses or where fictitious expenses are invoked in the tax return, in order to hide the real net income.

- At this point we also note that tax evasion is also committed if taxation on vessels (tonnage tax) is not remitted to the State.

**Non remittance or incorrect remittance of VAT and other withholding taxes and duties**

- Anyone who, in order to avoid paying value added tax, turnover tax, as well as withholding tax and other taxes that are shifted to end users, amounts, duties and levies does not remit or remits incorrectly or sets them off, as well as misleads the tax authorities by presenting false statements as true or by omitting or withholding the truth and receives tax return, as well as whoever withholds such taxes, duties and levies commits tax evasion irrespective of the amount in question.

**Issuance and receipt of false, fictitious or falsified tax records**

- The above actions constitute tax evasion irrespective of the amount in question and irrespective of whether the person committing these actions evades the payment of tax or not.

- Moreover, tax evasion also comprises the repeated non issuance or incorrect issuance of the records for the sale and transfer of goods or the provision of services that are specified in the Code of Books and Records.

**Non-payment of debts owed to the State and third parties**

- The non-payment of debts to the State which are final and due to the competent authorities for a period of time of more than 4 months, provided that the total amount owed from each separate cause exceeds the amount of EUR 5 000, is criminally punishable.

- The omission may not be punishable if the amount owed is paid to the State until the hearing of the case before the Court at any level of jurisdiction.
Smuggling

- Such crimes are described in detail in the provisions of articles 155-157 of Law 2960/2001.

Legal Entities

With respect to legal entities (companies etc) perpetrators of the crime of tax evasion are the natural persons/individuals that are appointed or indeed exercise the duties of administration or management (e.g. Chairmen of Board of Directors, Managing Directors, general managers for societes anonymes, administrators for Partnerships and Limited Liability companies etc).

As direct accomplices of the crime of tax evasion are considered the head of the accounting department in any kind or type of entity or anyone associated in any way in general in the commission of such offenses, including the person signing the tax returns as a proxy.

Procedure

The prosecution begins with the filing of a report from the competent tax office to the Public Prosecutor and especially to the Public Prosecutor of Economic Crime. The remaining procedure mainly follows the provisions of the Criminal Code and the Code of Criminal Procedure.

Finally, it should be noted that in cases where an administrative or judicial settlement has been reached for the totality of taxes, or in case of termination in any way of the dispute, the above acts of tax evasion are no longer punishable.
1. What legislation is currently in force in relation to anticorruption?

- Law 2656/1998, which ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- Law 2802/2000, which ratified the Convention against corruption involving officials of the European Communities or officials of Member States of the European Union (OJC 195/25 June 1997)
- Law 2803/2000, which ratified the Convention on the protection of the European Communities’ financial interests
- Law 3560/2007, which ratified Criminal Law Convention on Corruption and Additional Protocol
- Law 3666/2008, which ratified UN Convention on Combating Corruption
- Greek Criminal Code, articles 234-237, 239.
- Law 4022/2011, referring to trial corruption acts of public officials
- Law 1608/1950 (for the protection of the State's funds), which does not provide for different acts but serves as an aggravating factor (from a sentencing point of view) when the State's financial damage exceeds the limit of 150,000€.

All above-mentioned legislation aims to cover all aspects of corruption in political and economic activities and covers both bribery of foreign officials (a-e) and bribery of domestic public officials. Latest addition of Law 4022/2011 also provides for speedier processing of corruption cases through shorter procedural stages.

2. How is bribery defined under current legal framework? Are both forms of bribery (active and passive) punishable?

The basic definition of bribery is given in relevant articles of the Greek Criminal Code. These are also the definitions used for most of the International Conventions Greece is member to, when there is reference to the domestic legal framework.

Articles 235 (passive bribery) and 236 (active bribery) of the Greek Criminal code provide that the punishable act is an act of requesting or receiving, directly or indirectly through third persons in favour of oneself or others, benefits of any nature or accepting a promise of such benefits in order to act or omit to act in the future (or an act or omission to act in the past), with regard to public duties or contrary to these duties. The individual requesting or receiving a gift, promise etc. must be a public official (see below question no 4). The perpetrator of active bribery (art. 236 of the Greek Criminal Code) may be any individual or legal entity.
Article 237 of the Greek Criminal Code provides specifically for the act of bribing a judge. Wording of said legal provision is similar, whereby the punishable act may be requesting or receiving gifts or benefits in order to conduct or decide on a case in favour of or against someone. Articles 235, 236 and 237 are the basis framework in relation to the act of bribery. Through relevant legislation as set out above (b-e) they are applicable to acts of bribery relating to any public official (including members of international organisations or the European Union). The provisions on passive bribery (article 235 of the Greek Criminal Code) are not applicable with regard to the OECD Convention.

It should be noted that in the year 2007 (through Law 3560/2007) offering to influence a public official (to make a decision or to enter an agreement) has also become punishable for the first time.

3. What type of payments could fall under the scope of anti-corruption legislation? (facilitating payments, gifts, travel and entertainment, intermediaries, payments from/to third parties)

All payments and expenses must be in accordance to one's economic activity and duly registered in the records of a company. In case a company or person fails to register such payments there may be perceived as fictitious transactions. This would raise issues not only from a corruption point of view but could also be reviewed in relation to money laundering regulations and tax criminal offences provisions. All kinds of payments or expenses that cannot be justified under the scope of a certain financial activity or market rules can be reviewed as suspicious. There are some types of payments totally prohibited (e.g. facilitating payments) and other types of transactions that would not raise issues, such as gifts of minimal value.

One could not exclude the possibility of a payment being reviewed in accordance with the provisions on bribery due to the broad phrasing of the relevant articles of the Greek Criminal Code (“benefits of any nature or accepting a promise of such benefits”). This is more so in cases of payments of intermediaries or third parties or unjustified expenses of any type.

4. What is the definition of a public official? Are there any differences in defining foreign public officials and domestic public officials?

The definition of a foreign public official is given in article 2 of Law 3560/2007, which follows the wording of article 1 of the Criminal Law Convention on Corruption: “‘public official’ is understood by reference to the definition of ‘official’, ‘public officer’, ‘mayor’, ‘minister’ or ‘judge’ in the national law of the State in which the person in question performs that function and as applied in its criminal law; ‘judge’ includes prosecutors and holders of judicial offices; ‘legal person’ means any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations. In the case of proceedings involving public officials of another State, the prosecuting State may apply the definition of public official only insofar as that definition is compatible with its national law”
An exception to the above is Law 2656/1998 (OECD Convention) where the definition of a foreign public official is that of the OECD Convention (this has been confirmed again by Law 3666/2008).
The definition of a domestic public official, is provided for by article 13(a) of the Greek Criminal Code whereby a public official is the person to whom duties or service is granted (even temporarily) by the state, municipal or other state-controlled legal entities. Article 263A of the Greek Criminal Code provides for a detailed list of individuals that are perceived as public officials (even in a very broad sense).

5. What Authority or Agency has jurisdiction in enforcing foreign bribery laws and regulations? Are the same Authorities responsible for enforcing laws on domestic bribery?
Corruption cases are investigated by the Financial and Economic Crime Unit, a special task force of the Ministry of Finance with police and investigating powers (article 11 of Law 3650/2007). The Unit is supervised by a Public Prosecutor and is entitled to conduct full police investigations throughout the country. They are also entitled to request for mutual assistance at all stages of their investigation.
If there are indications of money laundering, the Independent Authority for Combating Money Laundering may conduct separate investigations and may initiate separate proceedings against individuals or companies, with or without the co-operation of the Financial and Economic Crime Unit. The Authority for Combating money laundering is also supervised by a Prosecutor (of higher rank).
A newly established Authority, the Economic Crime Prosecutor, is aimed at investigating and prosecuting in cases (including cases of corruption) involving financial damage of the Greek State (Law 3943/2011). The Economic Crimes Prosecutor is entitled to investigate, prosecute and review any economic crime case either alone or with the co-operation and co-ordination of any other investigating authority (police, special task forces, investigating judges, prosecutors).

6. Does criminal liability for acts of corruption lie with individuals? Can corporations or legal entities be held criminally liable for acts of corruption?
Criminal liability refers primarily to the individual. This rule has seen some exceptions over the past decade in order for the domestic legislation to comply with obligations undertaken through ratification of international conventions against corruption.
Although corporate liability is still not generally applicable, several provisions are in force stipulating certain forms of sanctions on the corporation or legal entity that benefits from the corruption act. Such provisions are those of Law 2656/19908 (OECD Convention), which provides for penalties that are imposed to legal entities benefiting from acts of bribery of foreign public officials in the form of administrative fines. Law 3650/2007 acknowledges that legal entities are liable for bribery if the acts of bribery were committed in their favour by individuals empowered to act on their behalf (managers, directors etc.) or to make decisions in relation to the company’s activities, and provide for a series of administrative penalties (e.g. fines). Administrative fines are the main type of sanctions and are imposed in accordance with the corporation’s activity, annual turnover etc. These provisions are applicable to all forms of participation in a corruption act (perpetrators, accessories and instigators).
7. Is private commercial bribery also punishable?

Private commercial bribery is punishable according to article 5 of Law 3650/2007. This legal provision is applicable to commercial and business activities without any involvement of public officials. Commercial bribery consists of benefits or promises to deliver benefits, or advantages to individuals working with companies in the private sector for violating the rules and obligations of their work.

8. What other rules, regulations, provisions may be applicable to cases of corruption?

Depending on the type of transaction that may constitute a bribery, other legal provisions may apply, especially, those on money laundering (Law 2331/1995) and tax criminal offences (Law 2523/1997). In such cases, more than one procedure can be initiated against an individual or a legal entity. There is also room for separate sanctions against a legal entity in the form of a fine (administrative or additional tax), temporary cease of activity etc.

The basic elements for application of above provisions (money laundering, tax-offences) would be a questionable transaction connected to the act of bribery. This money transaction could be perceived also as an act of money laundering of the proceeds of crime, as well as a fictitious transaction – from a tax regulation perspective – which would lead the Tax Authority to challenge the integrity and order of a legal entity’s registration records.

9. Is there a provision for leniency measures in cases of corruption? Can the disclosure of violations offer immunity or lesser penalties?

Leniency is not applied under Greek Law as a general rule. In order to facilitate application of anti-corruption legislation through recent change of legislation, article 15 Law 3849/2010 has added article 263B to the Greek Criminal Code whereby a series of leniency measures are provided for in favour of perpetrators of both passive and active bribery. Application of said provision requests from individuals participating in any way to an active bribery to report to the authorities the bribed official and disclose substantial information in relation to the official’s criminal acts. If the above criteria are met (reporting to the authorities and disclosure of substantial information on the official’s criminal conduct), these individuals are eligible either to receive a lesser sentence ranging from one to three years, which is not serviceable, instead of incarceration of five to 10 years. The Indicting Chamber may also grant these individuals a suspension of criminal proceedings against them.

These provisions are new and there is no benchmark yet as to the interpretation of substantial information disclosure or what may be the correct time to come forward and report a criminal act to the Authorities.

10. Are companies under specific obligation to disclose violations of corruption laws and/or related acts constituting tax irregularities or other misconduct?

There is no general rule set out by anti-corruption legislation expressly demanding disclosure of violations by a company/legal entity for violations of anti-corruption legislation by same. There are, however, specific requirements for disclosure of irregularities related to other aspects of a company’s activities, such as the obligation
to report suspicious transactions in the context of money-laundering regulations or tax criminal law. It is in this respect that a company’s compliance and internal audit control officers are under obligation to expose and report irregularities related to financial records or obscure transactions. Following an amendment of relevant regulations (with Law 3842/2010) auditors and accounting officers have increased responsibility for the accuracy of entries in the financial records.

11. Prosecution of corruption acts. Who is initiating the proceedings? Can a foreign legal entity be prosecuted for bribery?

Prosecution is always initiated and conducted by the Prosecutor’s Office. The Prosecutor gives the guidelines to enforcement agencies to conduct investigations, searches, interrogations, interviews etc. and then evaluates the findings of all investigation acts and processes the case further. Depending on the nature of the case and stipulated procedure, the Prosecutor may forward a case to an Indicting Chamber – proposing with written submissions for or against indictment – or refer an individual directly to trial. Depending on the seriousness or complexity of the case, more than one Prosecutor may get involved in prosecution proceedings jointly or under instructions by the Economic Crimes Prosecutor who has always seniority in economic crime cases. The Prosecutor may initiate prosecution following a written complaint, or take advantage of information from other sources relating to the commitment of a criminal act.

Criminal prosecution aims at individuals. It is in this respect that foreign companies cannot be prosecuted for the acts of foreign bribery. The Prosecutor may, however, initiate proceedings against individuals working with foreign companies provided either that they are related directly to Greek public officials (bribery of a public official by a foreign company) or indirectly through third parties or intermediaries acting in Greece who have facilitated bribes to foreign or domestic public officials.

12. What is the penal framework for an individual or a company violating the domestic bribery rules?

The basic penalty for individuals in cases of a misdemeanour act is imprisonment for at least one year*. When the value of benefits, gifts, etc. exceeds the amount of €73,000 in total, bribery becomes a felony and is punishable with incarceration of up to 10 years**. In cases of bribery acts resulting to financial losses of the Greek State exceeding 150.000 €, Law 1608/1950 is applicable, whereby sentences of incarceration of up to 20 years (with a minimum sentence of 10 years) are provided for. If aggravated circumstances apply (e.g. particularly large amount of financial loss or acts committed over a long period of time), a maximum of a life sentence may be imposed. Said penalties are cited at their nominal value and do not include benefits from rules on the conversion of prison terms to fines, rules of suspension of penalties, early conditional release, application of mitigating circumstances.

* misdemeanour acts are punishable with imprisonment up to 5 years
** felony acts are punishable with incarceration ranging from a minimum of 5 years to a maximum of 10 years
13. Can bribery cases be resolved without a trial? (provisions for settlement agreements, prosecutorial discretion and other such means)

Settlement agreements and similar means of resolving criminal cases are not generally provided for under Greek Law. Prosecutorial discretion is also not a practice when prosecuting crimes. There are specific provisions for settlement or plea agreements for property related crimes, mainly misappropriation of property, but not for the acts of bribery. Corruption cases are referred to trial, if substantial evidence is available, following prosecution, filing of charges, conducting of investigation and indictment. Tax-related offences linked to bribery cases may be resolved through settlement agreements (in the form of financial settlement with the Competent Authority).

14. Does Greek law provide for civil enforcement of foreign bribery laws?

Greece has ratified the Civil Law Convention on Corruption in 2001 by Law 2957/2001. Provisions therein are part of Greek Civil Law, mainly acknowledging rights to compensation, to seek annulment of agreements that were the result of bribery act(s) as well as specific provisions for the protection of civil servants against disciplinary punishment for reporting corruption practices to higher officials.
LEGAL PROFESSION IN GREECE
What is the origin of the legal profession?

The “lawyers” that appeared for the first time in world history were the orators of ancient Athens, when the rules that: a) individuals were supposed to plead their own cases and b) no one was allowed to receive a fee to plead the case of another person were ignored or widely disregarded in practice by the evolving tendency of individuals to ask the “disinterested” assistance of a trusted “friend”.

However, unlike their subsequent counterparts of ancient Rome, Greek orators were never officially allowed to receive financial reward for their legal services, therefore it was not possible at that time for legal representation to be organized into a real profession with professional titles, associations, etc.

How can a person become a lawyer (dikigoros) in modern Greece?

Any Greek citizen holding a law degree from a Greek university or has completed equivalent studies in a recognized foreign university may register with any bar association as a trainee lawyer (askoumenos dikigoros) for a period of eighteen (18) months – under the supervision of a lawyer or under the supervision of the Legal Council of State (or, according to the article 33 of Law no. 3910 of 8th February 2011, under the supervision of the Courts, but only for a period which may not last more than one semester for each trainee lawyer) at the end of which he is entitled to take part in relevant examinations (the so-called “Bar Exams”) in order to obtain the lawyer’s license. All candidates who pass the exams enter the profession. The legal profession is open to anyone interested who meets the abovementioned legal requirements – in Greece there is no numerus clausus.

According to the Presidential Decree 152/2000, which facilitates the practice of legal profession on a permanent basis in Greece by lawyers who obtain their degrees in another Member State of the European Union (Directive 98/5/EC), lawyers who are citizens of the EU Member States may practice on a permanent basis in Greece, either as self-employed or as salaried lawyers, as long as they have obtained their degrees within the EU.

What are the tasks and obligations of a lawyer?

Lawyers can exercise the profession in many ways: running their own office, establishing law firms or working as salaried associates with fixed remuneration/fees. They are organized in sixty-three (63) local bar associations (one for the territorial jurisdiction of each court of first instance) the presidents of which form the Council of Presidents (olomeleia proedron dikigorikon silogon ellados), as there is no national Bar. Presidents and Councils of local bar associations are directly elected by all lawyers members of each
Bar. Lawyers are initially admitted to the courts of first instance, afterwards in the courts of appeal and finally in the supreme courts, depending on how long they have been practicing the profession. In Greek legal system there is no distinction between barristers and solicitors.

Concerning their tasks, lawyers are exclusively competent to provide their clients with legal advice, to represent them before courts, judicial or administrative authorities, special committees or disciplinary boards. Moreover, lawyers have the legal and moral duty to constantly fight with responsibility for the protection of the civil, social and political rights of people, as guaranteed by the Greek Constitution and International Law. The legal profession is subject to the Lawyers Code (legislative decree no. 3026 of 8th January 1954, as amended), which regulates disciplinary law, fees and advancement in status in general. Lawyers must also comply with the Code of Conduct and the rules of their Bars. In general, they must act in an honest and decent way, absolutely consistent to their special role in the modern constitutional state and free society. Lawyers’ full compliance with the rules of professional ethics is strictly supervised by the disciplinary councils of each local Bar.

**What are the main problems that a lawyer faces during his everyday activities?**

Any simple contact with the system of justice and the public services may be an actual “Odyssey”: delays which actually tend to provoke *de facto* denial of justice, unacceptable conditions on the premises of the Courts, excessive spatial dispersion of the judiciary, insufficient secretarial services, etc.

Another important issue is the excessive and constantly growing number of lawyers – only in Athens, there are more than twenty-one thousand (21,000) professionals. This leads to the fact that more and more lawyers tend to face problems and difficulties in earning their living. For instance, in 2010, one third (1/3) of the lawyers in Athens did not have any appearance before a court. The everyday lawyer who has achieved to get a decent income is in fact only *exceptio probat regulam*.

**What are the recent evolutions in legal profession?**

In view of the Memorandum of Economic and Financial Policies (May 2010) and under pressure of the so-called “Troika” (EU - ECB - IMF), the Greek government was forced to adopt a number of measures incorrectly called “liberalization of the legal profession”. According to these measures:

- Fees for legal services are freely negotiated with clients, without the existence of any minimum threshold.

- Geographic restrictions in the exercise of legal profession have been abolished resulting in the lawyers providing their services within the geographic jurisdiction of all Bars (in other words, lawyers may practice their profession in the entire country without any special legal obstacle).

- Despite the fact that lawyers are legally considered as active participants in the exercise of public authority (justice) and that legal profession is organized as a public function, according to Greek legislation, tax/VAT has been imposed on legal services, so that lawyers are now fiscally treated in the same way as any freelancer, merchant, etc.
## RELATED INFORMATION

### BAR ASSOCIATIONS

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GREEK LAW DIGEST
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<td>A.S.E.P.'s Decentralised Department in Thessaloniki</td>
<td>60 Kifissias Av, 151 25 Maroussi, Athens, Greece</td>
<td>+30 (210) 615 1000</td>
</tr>
<tr>
<td>GREEK NATIONAL COUNCIL FOR RADIO AND TELEVISION (NCRTV)</td>
<td>5 Panepistimiou &amp; Amerikis str., 10564 Athens, Greece</td>
<td><a href="http://www.esr.gr">www.esr.gr</a> +30 (210) 3354500</td>
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<tr>
<td>HELLENIC COMPETITION COMMISSION</td>
<td>1a Kotsika str, 104 34 Athens, Greece</td>
<td><a href="http://www.epant.gr">www.epant.gr</a> +30 (210) 880 9130</td>
</tr>
<tr>
<td>HELLENIC CAPITAL MARKET COMMISSION</td>
<td>1 Kolokotroni &amp; Stadiou Str, 105 62 Athens, Greece</td>
<td><a href="http://www.hcmc.gr">www.hcmc.gr</a> +30 (210) 337 7100</td>
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<tr>
<td>REGULATORY AUTHORITY FOR ENERGY (RAE)</td>
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<td><a href="http://www.rae.gr">www.rae.gr</a> +30 (210) 3727400</td>
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<tr>
<td>COUNCIL OF COMMUNICATION CONTROL</td>
<td>19 Astronafton str, Marousi 15125, Athens, Greece</td>
<td><a href="http://www.see.gr">www.see.gr</a> +30 (210) 689 9331</td>
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<tr>
<td>THE GREEK OMBUDSMAN</td>
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<td><a href="http://www.sinigoros.gr">www.sinigoros.gr</a> +30 (210) 728 9600</td>
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<tr>
<td>HELLENIC OMBUDSMAN FOR BANKING - INVESTMENT SERVICES</td>
<td>1 Massalias Str, 106 80 Athens, Greece</td>
<td><a href="http://www.bank-omb.gr">www.bank-omb.gr</a> +30 (210) 3376700</td>
</tr>
<tr>
<td>CONSUMERS' OMBUDSMAN</td>
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<td><a href="http://www.synigoroskatanaloti.gr">www.synigoroskatanaloti.gr</a> +30 (210) 646 0862</td>
</tr>
<tr>
<td>COMMITTEE OF EUROPEAN SECURITIES REGULATORS (CESR)</td>
<td>11-13 Avenue de Friedland, 75008 Paris France</td>
<td><a href="http://www.cesr.eu.org">www.cesr.eu.org</a> +33 (0) 58 36 43 21</td>
</tr>
<tr>
<td>EUROPEAN PLATFORM OF REGULATORY AUTHORITIES (EPRA)</td>
<td>76 Allée de la Robertsau, F-67000 Strasbourg France</td>
<td><a href="http://www.epra.org">www.epra.org</a> +33 (0) 3 88 41 39 63</td>
</tr>
<tr>
<td>EUROPEAN ENERGY REGULATORS CEER &amp; ERGEG</td>
<td>28 Rue le Titien &amp; Erged B 1000 Brussels Belgium +32 2 788 73 30</td>
<td></td>
</tr>
</tbody>
</table>

**INDEPENDENT AUTHORITIES**

HELLENIC AUTHORITY FOR COMMUNICATION SECURITY AND PRIVACY
3 Ierou Lohou str, Marousi 151 24, Athens, Greece
www.aade.gr +30 (210) 638 7601-2

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1-3 Kifissias Av., 115 23, Athens, Greece
www.dpa.gr +30 (210) 647 5600

ASEP (Supreme Council for the selection of personnel)
6 Poulisou str, 105 64, Athens
www.asep.gr +30 (210) 870 6100, 200

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10 Kar. Serbias str., 101 80 Athens  
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**Ministry of Foreign Affairs**  
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3 Akadimias str., 106 71 Athens  
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