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Project Finance 2016

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Chapter 18

Greece

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1 Overview

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

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

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

Furthermore, the project finance market is approached in the light of the privatisation process undertaken by the Hellenic Republic Asset Development Fund ("HRADF"); established in July 2011, it is governed by law 3986/2011 as amended and in force and has taken the form of a public limited company, operating according to the rules of the private economy and acting for the benefit of public interest.

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

Recently, two major PPP projects for the construction and management of 24 school units in total in the area of Attica (financed by EIB and JESSICA UDF), and one PPP concerning the urban transportation-Telematics System, have been successfully concluded. Other ongoing PPPs across Greece relate to waste management, with the first PPP for the design, construction and operation of a waste treatment plant in Western Macedonia (financed by EIB, JESSICA UDF and the National Bank of Greece S.A.) having already been concluded. Furthermore, other project financings focus on the energy sector, and particularly in the field of renewables, the utilisation of municipal estates, the restoration of buildings, building infrastructure of universities and students' residences, police divisions and departments, fire stations, the construction of international conference centres, the installation and operation of security systems, hospitals, etc.

2 Security

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

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

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

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

With regard to immovable (real) property, the GCC provides for two standard *in rem* securities; mortgage and pre-notation of mortgage (articles 1257 *et seq.* GCC). More specifically:

- Mortgage is granted only over real estate property and usufruct rights, and may be established by virtue of a notarial deed, final court ruling or by virtue of law. Upon registration of the mortgage with the competent Mortgage Registry or cadastre where the real estate is located, the security and the order of priority are established. Any assignment, pledge or change in the terms of the mortgaged claim is also noted in the mortgages book.
- A pre-notation of mortgage is established only by virtue of a court ruling (including a payment order) under the procedure of interim measures (articles 682 *et seq.* of the Greek Code of Civil Procedure – "GCCP") and is also registered with the competent Mortgage Registry or cadastre where the real estate is located. The main difference between a mortgage and a pre-notation is that the former allows immediate satisfaction of the claim, whereas a pre-notation requires conversion to mortgage upon a court ruling, not being subject to an appeal, adjudicating the underlying claim. Upon issuance and registration of this final decision, the beneficiary obtains a mortgage valid retroactively as from the date of the registration of the pre-notation.

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Movable assets may be secured via: (1) pledge under the GCC provisions; (2) notional pledge and floating charge under law 2844/2000; (3) pledge established in favour of banking institutions under Legislative Decree 17.07/13.08.1923; and (4) law 3301/2004 on financial collateral arrangements, which transposed EC Directive 2002/47/EC. More particularly:

- A pledge may be established on movable assets on which the borrower has full, bare or conditional ownership, as well as on transferable rights and claims. In accordance with the GCC, the secured claim should be monetary or assessable in money and identifiable. The pledge is established by a notarial deed or document having a certain date, provided the pledged asset is delivered to the pledgee or a third party, if the latter has been agreed. In case of a pledge on claims, the security is perfected by notification of the pledge to the third-party obligor (article 1248 GCC). The perfection entitles the pledgee to receive any benefits of the asset (e.g. dividends of shares, exercise of voting rights in relation to the pledged shares, unless otherwise agreed), as well as its priority right in auction proceedings.
- Under the provisions of law 2844/2000, a notional pledge, i.e. a pledge under which the pledgor reserves the possession of the pledged assets, may be established either on types of movable professional equipment (cars, machinery, etc.) as well as products in the form of raw material, semi-processed or completed products ready for sale. Both contracting parties should be businesses or professionals, while the security should be granted for the purpose of covering the needs of the borrower's business or profession. On the other hand, a floating charge that may be established on a group of movable assets or rights, ensures not only that the pledgor remains in possession of the assets (or rights) but may also dispose the pledged assets, so long as it duly replaces them with similar assets or rights of the same value. The aforementioned securities are executed in writing and need to be registered with the Pledge Registry to achieve perfection and determination of ranking. Upon registration and unless renewed, the security is effective for 10 years from registration, and the duration of the pledge may be extended in accordance with the provisions of law 2844/2000.
- Legislative Decree dated 17.7-13.8.1923 provides for security interests granted in favour of credit institutions licensed by the Bank of Greece securing existing or future claims. A pledge granted in favour of banking institutions under the provisions of the aforementioned Decree on the borrower's claims against a third-party obligor is established by a written agreement (no notarial deed is required). Upon perfection of the security, the pledge agreement is binding upon both the borrower and the third party. This agreement is perfected by the service of the agreement to such third party by a court bailiff.
- A pledge over cash, financial instruments (such as shares and other instruments equivalent to shares and bonds, provided they are negotiable on regulated markets) or credit receivables may be established under law 3301/2004. The establishment, validity and conclusive effect of the financial collateral agreement is not subject to any formal act. However, in relation to *in rem* financial collateral granted on titles in a dematerialised form and listed on the Athens Exchange, such deviation does not affect the obligation to evidence the establishment of the security by means of a registration with the electronic system run by the Athens Exchange. In such case the security agreement should be certified in writing or by any equivalent means.

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

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

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

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

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

We should also note here that, despite the existing capital controls in Greece imposing restrictions on opening a new bank account, the legislative act (Official Government Gazette issue A' no. 84/18.07.2015) as has been amended so far and ratified by law 4350/2015 exceptionally permits the opening of a bank account with a credit institution operating in Greece as cash collateral for a loan or a documentary letter of credit issued by such bank (for further details regarding capital restrictions please refer to question 18.1).

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

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

Pursuant to articles 1244 and 1245 of the GCC, the provisions of the GCC applicable to the common pledge apply to the pledge of bearer shares of *sociétés anonymes mutatis mutandis*. The provisions of Legislative Decree 17.07/13.08.1923 are applicable as well. Therefore, as far as the perfection of the pledge is concerned, in case of a pledge established under the provisions of the GCC, the pledge should be established by a notarial deed or a private agreement with a certain date (such as documents served by a court bailiff). On the other hand, in case of a pledge to be established under the provisions of the Legislative Decree 17.07/13.08.1923, a private agreement should be served by a court bailiff and the shares have to be delivered to the pledgee. The same applies to the pledge of registered shares of *sociétés anonymes*, although there is no express provision in the law.

A note of the pledge agreement should be endorsed in the body of the shares and signed by both contracting parties and the issuing company of the pledged shares by analogy of article 8(b) of the codified law on *sociétés anonymes* 2190/1920, and the shares' and shareholders' registry of the issuing company of the pledged shares. Although not compulsory for the perfection of the security, this is necessary in order to legalise the pledgee towards the company.

Regarding the pledge under law 3301/2004 please refer to question 2.2 above.

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

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

Mortgage: Pursuant to article 1 of the ministerial decree 111/2012 (as amended by law 4336/2015), notary fees for execution of the mortgage deed ranging from 0.1% up to 0.8% depending on the secured amount plus VAT (currently amounting to 23%). Moreover, for the execution of every notary deed, a standard fee of EUR 20 is required. Finally, in order for the deed to be valid, Lawyers' Pension Fund fees amounting to 1.3% on the secured amount have to be paid. The Registrar's fee for registration of the mortgage amounts to approximately 0.8% of the value of the secured claim plus EUR 60 for issuance of the relevant certificates and summary sheets by the competent Real Estate Registry. On the other hand, the fee for the registration of the deed with the Cadastre is approximately 0.9% of the value of the secured claim. Stamp duty (when applicable) may currently reach 3.6%. In case of bond loans secured *in rem*, a fixed amount of EUR 100 applies for registration of their securities *in rem*. Also, according to article 14 of law 3156/2003, the notary fees for the execution of a mortgage deed securing a bond loan amount to a standard fee of EUR 100 plus proportional fees, depending on the secured amount, which cannot exceed the amount of EUR 2,500.00. Other costs, such as the lawyer's fee for the representation of the client during the notarial or court procedures, should also be taken into consideration.

Pre-notation of mortgage: In this case the fees and costs do not include the notarisation, since the pre-notation can be registered only by virtue of a court decision. Therefore the fees payable are the following:

a) Registrar's, Cadastre's and Real Estate Registry's fees mentioned in the mortgage. The payable fee is the same for both mortgage and pre-notation of mortgage; and

b) Lawyer's fee for the representation of the debtor before the competent court, which ranges between EUR 350 and 500 (EUR 300–400 for the representation of the client before the court plus EUR 50–100 for stamps, depending on the Bar Association to which the lawyer belongs).

Costs for the conversion of a pre-notation to a mortgage amount to approximately EUR 15 plus approximately EUR 5 per issued summary sheet, while the costs for re-registration of a pre-notation in case of change of the beneficiary are EUR 100 per registration.

Notional pledge and floating charge: This amounts to approximately 0.8% of the secured amount, plus EUR 4.5 per summary sheet issued by the competent Pledge Registry. Again, the flat fee of EUR 100 is also applicable, as per the above in case of notional pledge and/or floating charge securing a bond loan.

Finally, unless otherwise agreed, the aforementioned registration fees are borne by the borrower.

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

The filing, notification and registration of security do not require a significant amount of time, however there could be bureaucratic delays, taking into consideration that some securities require a court decision. Regarding expenses for registration of the different types of securities, please refer to question 2.6 above.

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

In principle, and as a general rule, there are no regulatory or similar consents required regarding the creation of security over real property, plant machinery and equipment. There could however be exceptions to such rule in cases of concessions or PPPs, where the consent of the competent authority might be required. Besides, the GCC (articles 1257 *et seq.*) provides for the ability of the parties to agree on a consensual pre-notation of mortgage.

3 Security Trustee

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

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

A deviation from such principle is the capacity of the bondholders' agent under the Greek Bond Law (3156/2003) to represent the bondholders and take and hold securities in their name and on their behalf. The bondholders' agent is entitled to proceed with any step necessary for the enforcement of securities and allocation of the relevant proceeds amongst the bondholders. A similar provision is that of law 3389/2005, in accordance with which in case of a PPP, where the PPO has more than one lender, any *in rem* securities granted may be established in favour of the lenders' agent, appointed in accordance with the relevant credit agreement concluded between the PPO and its lenders.

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

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

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4 Enforcement of Security

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

I. Generally, the enforcement of security is implemented as follows:

- According to the provisions of the Greek Code of Civil Procedure ("GCCP"), enforcement of *in rem* security must be implemented through judicial procedure, with the exception of certain limited instances provided by law. This procedure may be initiated by both secured and unsecured creditors in order to proceed with the liquidation of the debtor's assets (whether subject to security or not), through a public auction.
- The aforementioned does not apply to secured creditors under law 3301/2004, where the creditor is entitled to realise its collateral without any prior judicial or enforcement procedure.
- Simpler judicial proceedings are required for liquidation of mortgages or pledges in accordance with the provisions of the Legislative Decree 17.07/13.08.1923; however, enforcement in the process provided under such decree is not followed in practice by the banks, due to the fact that the most common security provided by debtors is pre-notation of mortgage, to which enforcement procedure under such decree is not applicable.
- For **bankruptcy and debt-restructuring** proceedings, please refer to question 5.1.

Requirements and constraints in accordance with GCCP:

(i) Enforceable title vested with a writ of execution issued by the courts or by a notary public (the latter is not frequently used due to elevated fees); and (ii) service upon the debtor by a court bailiff of a copy of the enforceable title together with a notice for payment. Foreclosure of the debtor's assets begins three business days after the service upon the debtor as above. The debtor's objections to the enforcement proceedings and possibility of suspension of the enforcement are taken into account. Further, GCCP provides numerous other legal recourses against acts of enforcement by virtue of an enforceable title, which often may extend the duration of the procedure for two or three years:

- The assets are liquidated through public sale or other methods prescribed by law. Other creditors, wishing to have an entitlement to the liquidation proceeds, have to announce their claims against the debtor before the enforcement agent (i.e. notary public) within a specific deadline. The liquidation proceeds are distributed by the enforcement agent between the executing creditor and the announced ones, as per the ranking of claims (article GCCP 975 *ff.*).
- Such ranking may be contested by any party having legitimate interest.
- If the enforceable title is a court judgment or a payment order, initial court fees are approximately 1.1% over the amount of the claim. State fees for the issuance of a writ of execution vary from 0% to 3% over the claimed amount and/or the accrued interest. For real estate, mortgage or prenotation of mortgage registration fees are approximately 1% over the amount of the claim.
- Fees payable to the enforcement agent and the court bailiff depend on the nature of the enforcement act and the number of auctions. Additional costs are also likely to arise, such as payments for legal counsels, property appraiser etc., which cannot be quantified upfront.

Requirements and constraints in accordance with the other legal instruments:

- In case of Legislative Decree 17.07/13.08.1923, if a debtor is in default of meeting its financial obligations, the pledgee or mortgagee serves him, by means of a court bailiff, a notice for payment. If the debtor fails to pay the amounts due, then the debtor may initiate, through a notary public, an auction for the sale of the pledged or the mortgaged asset. The debtor may challenge in court the notice of payment and the auction itself. In some cases, exercise of such right of the debtor does not result in suspension of the auction proceedings. The general ranking of claims is applicable and the official costs are generally not substantial.
- In case of law 3301/2004, in the event of default: (1) either the collateral-taker is entitled to realise or appropriate the financial collateral, without any prior judicial or enforcement proceedings; or (2) a close-out netting provision comes into effect.

II. It is noted that GCCP has been recently reformed. The revised GCCP, effective for enforcement proceedings from 1 January 2016, includes among others a series of amendments regarding enforcement process, the most significant of them being the following:

- **Abolition of court hearings.** The new GCCP abolishes open hearings; the court process is basically carried out by submission to the court of the relevant litigation claims and counter-claims, as well as of evidence. The case is typically heard before the court (1st hearing date), without the physical presence of the litigant parties' lawyers and witnesses, unless the presiding judge considers that witnesses should be presented and examined before the court. In such a case, a second hearing date within the same judicial year is set, to which both parties will be summoned.
- **Limitation of the debtor's avoidance actions.** Pursuant to the provisions of the new GCCP, the stages during which the debtor may raise objections against enforcement proceedings are limited basically to two; one before, and one after the auction. In particular, the debtor may challenge: a) all steps of the enforcement process, as well as the creditor's claim, within 45 days from the foreclosure date; and b) the validity of the last enforcement action (i.e. auction), within 30 days from the auction in case of movable property and within 60 days from the date of the transfer deed's registration to the Real Estate Registry in case of immovable property. If the debtor files multiple annulment petitions against enforcement acts of the same stage, the clerk's office shall set the same hearing date for all of them. Moreover, the debtor is deprived of the right to appeal before the Supreme Court against the judgment of the Court of Appeal, ruling over its petition against the enforcement process or the auction, unless the enforceable title is an arbitral award or a notarial deed, in which case a petition for cassation before the Supreme Court shall be allowed.
- **Parallel enforcement proceedings.** According to the former legal framework, parallel enforcement proceedings initiated by different creditors on the same asset were not permissible; however, according to the new GCCP this restriction is abolished, thus allowing creditors to take over the liquidation process of assets already seized by other creditors, without having to resort to court.
- **Minimum auction price.** With regard to real estate property, the minimum auction price shall be set at the commercial value of the auctioned property. A Presidential Decree stipulating all of the technical details and way of estimating the commercial value of the auctioned property is expected by 1 June 2016. In the meantime, according to the grandfathering provisions of the new GCCP, the minimum auction price cannot be set lower than the property's taxable

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value. Furthermore, in case of a fruitless auction, a new one must be conducted within the next 14 days. No formalities are required for the conduct of the second auction and the minimum auction price will be set at ½ of the estimated value of the seized property.

- **Reduction of the guarantee to be submitted for participation in the auction.** The amount of guarantee to be submitted by anyone who wishes to participate in the auction is reduced from 100% to 30% of the minimum auction price.
- **Abolition of the super priority of claims of the Social Security Organisations, the Public Sector and claims arising from employment relationships.** According to the new GCCP, creditors holding a general privilege (i.e. Social Security Organisations, Public Sector, lawyers and employees) will no longer benefit from an unlimited super priority, as is the case today. Instead, they will be satisfied from ⅓ of the auction proceeds, whereas the remaining ⅔ will be allocated to the secured creditors. If unsecured creditors have lodged their claims before the public notary, then secured creditors will be satisfied from 65% of the auction proceeds; creditors holding a general privilege shall be satisfied from 25% of the auction proceeds; and unsecured creditors from the remaining 10%. Again, if there are no claims of creditors holding a general privilege, then secured creditors will be satisfied from 90% of the auction proceeds and unsecured creditors from the remaining 10%. Finally, if there are no claims of secured creditors, then creditors holding a general privilege will be satisfied from 70% of the auction proceeds, and unsecured creditors from the remaining 30%.

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

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

5 Bankruptcy and Restructuring Proceedings

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

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

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

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

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

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

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

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

On 14 August 2015, law 4336/2015 regarding the ratification of the Draft Financial Assistance Facility Agreement with the European Stability Mechanism ("ESM"), along with regulations for the materialisation of the Credit Facility Agreement, was voted by the Greek Parliament, which introduced significant amendments to the existing GBC affecting the provisions regarding the ranking of creditors. Specifically, the ranking of creditors adapts the relevant provisions of the GCCP (article 975-977), as recently amended and in force by virtue of law 4335/2015, in cases of secured and privileged claims.

In bankruptcy liquidation, after deducting the judicial fees, the fees relating to the administration of the bankruptcy estate, including the administrator's remuneration as well as the claims of the team creditors, creditors will be ranked in the following order:

- claims for the financing of the debtor of whatever nature, in order to ensure the continuation of its activities and of the payments under a rehabilitation agreement or the reorganisation plan of the business;
- outstanding VAT claims, as well as claims arising from labour contracts and claims of the Social Security Organisations; and
- claims held by the Greek State and Local Government Organisations.

By specific reference in the GBC, the claims of all other creditors (without general or special privilege) follow the rules for the distribution of the forced sale proceeds provided in the GCCP and are satisfied *pari passu* from the liquidation proceeds of assets of the debtor.

In light of the recently amended provisions of the GCCP, claims of the same rank shall be satisfied proportionately, unless the law provides otherwise.

With regards to the claims' allocation it is now foreseen that:

Creditors holding a general privilege (i.e. Social Security Organisations, Public Sector, lawyers and employees) will be

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satisfied from ⅓ of the auction proceeds, whereas the remaining ⅔ will be allocated to the secured creditors.

If, apart from claims with a general privilege, there are secured claims as well as unsecured claims, the secured creditors will be satisfied by the 65% of the auction proceeds; the creditors having a general privilege will be satisfied by 25%; and the unsecured creditors up to 10% of the auction proceeds, which will be distributed to the creditors *pari passu*.

If there are secured (special privilege) claims along with unsecured claims, secured claims will be satisfied by up to 90%, and unsecured ones by 10% of the auction proceeds, which likewise will be distributed among unsecured creditors *pari passu*. If there are claims of creditors holding a general privilege, along with unsecured claims, the creditors holding a general privilege will be satisfied by 70% of the auction proceeds, and the unsecured creditors will be satisfied *pari passu* from the remaining 30% of the auction proceeds.

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

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

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

Following the issuance of a final or enforceable decision, the enforcement against the secured assets is conducted through court proceedings. Enforcement of security granted on movables and securities leads to public auction. However, voluntary auction may be made through a specific provision of law (e.g. law 3301/2004) or court decision or agreement of the parties.

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

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

Ordinary rehabilitation: This may be initiated by debtors who are facing financial difficulties or who have already reached the state of the cessation of payments following submission of the relevant application before the bankruptcy court requesting the opening of the rehabilitation procedure. If requested by the creditor, the individual enforcement acts against the debtor's assets may be suspended. The rehabilitation agreement shall be concluded within four months (with a possibility of extension of the procedure which cannot exceed a 12-month period in total if the court finds that there is progress in the negotiations), starting from the date of the issuance of the court decision. The conclusion of the agreement is effected either after the decision of a creditors' meeting by a quorum of creditors representing at least 50% of the totality of claims and a majority of 60% of claims of creditors represented at the meeting (including at least 40% of creditors secured by *in rem* securities or holding a special lien or a pre-notation of mortgage), or by means of negotiations with creditors representing the above majority percentages (60%-40%) of the totality of the claims. In the event that the court proceeds to the ratification of the agreement, then the latter shall have a binding effect even on dissenting creditors.

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

Reorganisation plan: The debtor and its creditors may arrange on a contractual basis the course of the bankruptcy procedure, i.e. either the continuation of the debtor's operation under the existing or a new corporate structure; the sale or lease of the debtor in whole or in part to a third party as a "going concern"; or the liquidation and allocation of its assets to the creditors. A reorganisation plan is adopted, and upon ratification by a court decision, which is binding upon all creditors of any category and constitutes a writ of execution, the bankruptcy proceedings are terminated and the debtor assumes the operation of the business aiming at the fulfilment of the terms of the plan, whereas the creditors assume their claims against the debtor within the terms of the plan. With regard to the ongoing procedures, the law provides a threshold for the decrease of the creditors' claims (no less than 10%, payable in whole or in part within three years). This, however, does not apply to proceedings commencing after the enactment date of law 4336/2015, namely 19 August 2015. The rights of *in rem* secured creditors are not affected unless otherwise specified in the plan. In any event, these rights are maintained in favour of the new claim as this is formulated by the plan, unless the creditor secured by these agreed otherwise.

The law 4307/2014, which was published on 15 November 2014, has *inter alia* made available the following extra-ordinary insolvency procedures:

- The extraordinary procedure for the settlement of merchants' debts, which may be initiated by debtors qualifying as merchants and which has binding effect on all creditors. The consent of the creditors representing at least 50.1% of all the debtor's claims, 50.1% of any claims secured *in rem* or by virtue of any other form of security against assets, is required (among the consenting creditors should be at least two credit institutions, representing at least 20% of the total obligations of the eligible entity). The settlement agreement with creditors provides for restructuring measures, which may include *inter alia* the partial write-off of the debt, the extension of the repayment period, the conversion of receivables into equity (debt-for-equity swap) or any other appropriate measure. The debtor whose settlement application is approved is entitled to repay any overdue debts towards the social security institutions or the tax authorities in 100 monthly instalments and receive a write-off of any penalties and/or interest equal to 20%.
- The extraordinary procedure of special administration which may be initiated by the creditors. The creditors should include at least one credit institution and represent at least 40% of the total amount of the debt of the debtor according to its last published financial statements. The duration of the special administration is 12 months starting from the issuance of the decision of the court, and the administrator appointed conducts a public tender for the sale of the totality of all the debtor's assets or of separate business units.
- New law 4354/2015 (Official Government Gazette issue A' no. 176/16.12.2015) regarding, among others, the management of non-performing loans, provides that the management of such loans can be assigned to *sociétés anonymes* with their registered seat in Greece or the EEA (the "**management companies**") upon the grant of a permit

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by the Bank of Greece. These management companies are entitled, among others, to initiate, attend and/or participate in pre-bankruptcy rehabilitation or bankruptcy procedures or procedures regarding the settlement of debt and the extraordinary insolvency procedures of the abovementioned provisions of law 4307/2014. In such cases, decisions issued shall have a direct binding effect on the beneficiaries of the relevant claims from non-performing loans.

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

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

Civil liability in the GBC is based on the culpable delay in filing for bankruptcy (article 98 of the GBC). The Board of Directors is obliged to file for bankruptcy within 30 days from the moment when the company reached the state of the "cessation of payments". Such liability normally covers the damages of creditors which were created from the date when the application for bankruptcy should have been filed, as above, up to the declaration in bankruptcy.

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

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

6 Foreign Investment and Ownership Restrictions

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

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

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

Greece has concluded about 45 Bilateral Investment Treaties ("BITs") with other countries for the protection of foreign investments in its territory. On an EU and EEA level, the provisions of the TEU and TFEU, as well as the secondary EU legislation, are applicable for the protection of investments and foreign undertakings.

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

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

Increased supra-legislative protection (and privileges) is afforded to the import of foreign capital destined for productive investments by virtue of the Legislative Decree 2687/1953. The protected capital may be imported in various forms, such as indicatively: exchange, machinery, materials, inventions, technical methods, trade and industrial marks. The Legislative Decree offers a wide range of protective measures (such as fixed tax regime, reduction, waiver of import duties and/or levies). Special administrative and legislative procedures must be followed in order to include a foreign investment in the protective ambit of the Legislative Decree.

7 Government Approvals/Restrictions

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

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

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

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

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

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

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

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

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

In principle, no. Generally, all monetary transfers abroad must be effected through commercial banks in Greece, which are obliged to check the authenticity of the transaction and ensure that the payment has been subject to, or is exempt from, withholding tax.

However, currently and due to the extraordinary fiscal situation of Greece, provisional restrictions (capital controls) have been introduced limiting the free outflow of money and foreign exchange transactions. The level of restrictions is gradually de-escalating.

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

Greece has introduced a set of CFC rules in relation to the undistributed income (i.e. dividends, interest, etc.) of foreign legal entities, provided that certain requirements are met (incl. participation by 50% or more in the share capital of the foreign entity, and tax residence in a non-cooperative jurisdiction or a jurisdiction with beneficial tax regime outside the EU). There are no particular restrictions on returns other than a 10% tax withholding on dividends paid out to non-Greek parent companies of Greek subsidiaries (unless a double taxation treaty provides for a more favourable withholding tax rate or the EU Parent-Subsidiary Directive applies). Regarding loan payments, interest payments by a Greek legal person are in principle subject to 15% withholding tax (unless a double taxation treaty provides for a more favourable withholding tax rate or the EU Interest-Royalties Directive applies).

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

Project companies can open offshore accounts in other jurisdictions. As far as onshore accounts are concerned, their opening is currently subject to capital control restrictions, which are gradually de-escalating.

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

There are no restrictions on the payment of dividends to non-Greek resident parents other than the general company and accounting rules on dividend distributions. As noted, however, under question 7.5 above, monetary transfers abroad are currently subject to certain restrictions, which are gradually de-escalating.

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

Greece has transposed most EU environmental laws into domestic legislation. As a matter of fact, on 9 November 2015 the Greek Parliament voted law 4342/2015 transposing the EU Directive 2012/27 on Energy Efficiency. This way, all large enterprises are obliged to conduct frequent and effective energy audits. A factor to be considered, depending on the nature of the project and its environmental impact, is annulment proceedings brought before the High Administrative Court (Council of State), which may stall construction works.

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

There is no specific legal framework for procurement by private project companies. State or state-owned companies comply with public procurement rules transposing EU legislation. The newly established Hellenic Single Public Procurement Authority monitors public procurement procedures and ensures compliance with the relevant EU legislation. Within the framework of its vested authorities, it regularly issues circulars which include guidelines regarding the legislative developments at EU level that are to be applied and/or complied with by the Awarding Authorities.

8 Foreign Insurance

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

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

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

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

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

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

In practice, however, the claim from the insurance policy is assigned from the debtor-owner of the mortgaged property, movable or immovable, to the secured creditor (domestic or foreign). In such cases, a "loss payable clause" may be added in the policy.

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9 Foreign Employee Restrictions

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

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

The statute regulating the conditions under which a foreigner (third country national) may work in Greece is law 4251/2014. It entered into force on 1 June 2014 and contains provisions on the entry of foreigners to Greece, their residence in the country, various purposes for residence (e.g. residence for educational purposes, residence for the purpose of economic activity, etc.). Third-country nationals who wish to work in Greece must receive before travelling to Greece, a visa from the Greek Embassy or Greek Consulate of the country of their residence.

Once they enter Greece they should apply for a permit during the time period said visa is still valid, depending on the category they fall under, according to the law on immigration. Residence permits for work purposes include the following categories:

- salaried employment or rendering of services or project;
- employees for specific purposes (i.e. executives, members of the BoD, etc.);
- investment activity; and
- highly qualified employees (Blue Card).

Third country nationals receive only one permit, which is valid as a residence permit for work reasons. Applications for granting of work permits are submitted before the competent one-stop shop of the Directorate for foreigners and immigration of Decentralized Administration based on the applicant's place of residence, or before the competent Directorate for immigration policy of the Ministry of Interior. If individuals do not have the required permit, then any employment contract is invalid.

10 Equipment Import Restrictions

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

There are no restrictions or controls on the import of project equipment other than the ones applying at EU level (Common Customs Tariff) and, potentially, military material. Special rules apply when goods are placed in customs-controlled free zones and free warehouses, thus avoiding payment of any duties or taxes, or VAT. Special rules also apply for temporary importation or for processing.

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

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

11 *Force Majeure*

11.1 Are *force majeure* exclusions available and enforceable?

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

12 Corrupt Practices

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

Quite recently, the Greek Government has passed through the Parliament law 4254/2014 which seeks – *inter alia* – to reform basic anti-corruption provisions of the Greek Criminal Code ("GCrC") in an effort to intensify the country's compliance with its international treaty obligations and update the local legal (penal) system against corruption.

Bribery in the Public Sector:

I. According to the GCrC, the term "public official" (i) refers to a person who is appointed, permanently or temporarily, to render public services (including regional and municipal services as well as services provided by legal entities of the public sector), and (ii) encompasses any and all other categories of foreign public officials as determined by a number of international instruments already ratified and integrated into the domestic legislation.

II. An individual soliciting or receiving, directly or indirectly via intermediaries, in favour of himself or any third party, any undue advantage/benefit of any nature as well as any promise for such advantage/benefit in order to act or refrain from acting in the exercise of his duties or in breach thereof, must be a public official (passive bribery). The offender of active bribery may be any individual offering or promising, directly or indirectly via intermediaries, any undue advantage/benefit of any nature to a public official, in favour of the latter or any third party, in order for the public official to act or refrain from acting in the exercise of his duties or in breach thereof. The GCC also provides for the act of bribing judges and/or arbitrators (both active and passive bribery).

III. The penalty for passive bribery in the public sector depends on whether the public official would be obliged to act or refrain from acting, regardless of the undue advantage/benefit received or offered. In particular:

- Should the public official receive or be offered any undue advantage/benefit so as to execute a lawful duty of his, a sentence of imprisonment of at least one (1) year (up to

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five (5) years) plus a monetary fine from EUR 5,000.00 up to EUR 50,000.00 may be imposed; in case, however, of a recidivist public official or when the bribe is of a particularly high value, bribery is treated as a felony and is punishable with incarceration up to ten (10) years plus a monetary fine from EUR 10,000.00 up to EUR 100,000.00.

- Should the public official receive or be offered any undue advantage/benefit so as to execute an unlawful act, which is not permitted by the law and exceeds his duties, a sentence of incarceration up to ten (10) years plus a monetary fine from EUR 15,000.00 up to EUR 150,000.00 may be imposed; in case, however of a recidivist public official or when the bribe is of a particularly high value, bribery is punishable with incarceration up to fifteen (15) years plus a monetary fine from EUR 15,000.00 up to EUR 150,000.00.

IV. The penalty for active bribery towards public officials is imprisonment of at least one (1) year (up to five (5) years) plus a monetary fine from EUR 5,000.00 up to EUR 50,000.00 within the context of the public official's lawful duties. Should, however, the public official be asked to execute an act which is not permitted by the law and exceeds his duties, a sentence of incarceration up to ten (10) years plus a monetary fine from EUR 15,000.00 up to EUR 150,000.00 may be imposed on the offender of active bribery.

V. It is further provided that a sentence of imprisonment may be imposed on the business manager(s) or any person having authority on the decision-making or supervisory authority in the event that he/they did not prevent by negligence any employee(s) of the business from committing active bribery towards public officials in favour of the business.

VI. Passive and active bribery of political officials (i.e. members of legislative and governmental bodies as well as members of local and regional authorities) are introduced as distinct types of corruption and are treated as felony acts under the GCrC.

Bribery in the Private Sector: Private commercial bribery applies to commercial and business activities without any involvement of political and/or public officials, and consists of benefits or promises to deliver benefits or advantages to individuals working in any capacity for companies in the private sector (including, but not limited to, employees, external partners, associates and legal counsels) in order for the latter to violate the rules and obligations of their work.

Confiscation: The proceeds of bribery, as well as the property/assets acquired by such proceeds, are subject to confiscation.

Corporate Liability: In Greek penal law there is no general rule for criminal liability of legal entities; the structure and prerequisites of most legal provisions in terms of knowledge and intent apply to individuals. However, Greece has ratified a series of treaties and conventions which called for measures against entities in cases where they benefit from the criminal actions of their employees. We indicatively refer to law 3691/2008 (*re* money laundering and prevention of terrorism funding) and law 4042/2012 (*re* environmental offences). It should be noted that: (i) an entity's liability is not *stricto sensu* criminal but actually includes a series of administrative measures; and (ii) liability of the legal entity is dependent on liability of the entity's employee(s).

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

13 Applicable Law

13.1 What law typically governs project agreements?

Greek projects are typically governed by the laws of Greece, given that the projects are located within the Greek jurisdiction and several construction operation and environmental provisions of a mandatory nature apply. Besides, Greek law also applies in the majority of cases since project counterparties consist of Greek entities. However, according to the provision of Regulation No. 593/2008 of the European Parliament and of the Council (Rome I) regarding the law applicable to contractual obligations, the contracting parties are free to choose the governing law which may be applied to only a part or the whole of the contract. Greek courts are obliged to apply the agreed law, unless it contradicts the core principles of Greek law and especially the provisions set for the protection of public order.

13.2 What law typically governs financing agreements?

Financing agreements are typically governed by Greek law. However, it is common for the contracting parties to be subject to the law on which they agree, especially English law, when the group of creditors is dominated by foreign banks or international institutions. In any case, the contracting parties can make use of the aforementioned provisions of the Rome I Regulation regarding the applicable law.

Particularly with regards to security agreements, they are typically governed by Greek law.

13.3 What matters are typically governed by domestic law?

As mentioned above, there is no limitation regarding the matters which can be governed by Greek law. Nevertheless, the contracting parties should bear in mind that the application of Greek law is mandatory for dispute resolution regarding the interpretation, application or the validity of a Partnership Agreement in a PPP project (see article 31 par. 3 of law 3389/2005).

14 Jurisdiction and Waiver of Immunity

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

Generally, submission to a foreign jurisdiction may be validly agreed between the parties under Greek law. However, a foreign jurisdiction clause could be denied by a Greek court, especially if same refers to the jurisdiction of a non-EU Member State country, in a case where there is no close connection of such country with the case and a hearing in such country appears impossible or unreasonable. Furthermore, submission to a foreign jurisdiction may be limited mainly: (a) by the rules on exclusive jurisdiction set out in article 22 of Council Regulation 44/2001, as well as in article 24 of Council Regulation 1215/2012 (the latter has replaced Council Regulation 44/2001 and shall apply to legal proceedings instituted on or after 10 January 2015); and (b) for disputes arising out of consumer contracts, employment contracts or insurance contracts.

With regard to enforceability, a distinction needs to be made between decisions issued by EU and non-EU Member States' courts. Decisions of EU courts are declared enforceable in Greece through a simple procedure by virtue of Council Regulation 44/2001. From 10 January 2015, according to Council Regulation 1215/2012, if a decision issued in a Member

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State, then it shall also be enforceable in Greece without any declaration of enforceability being required. The conditions for the enforceability of decisions issued by non-EU Member States' courts depend on bilateral treaties. In the absence of any bilateral treaty, for an enforceable decision of a non-EU Member State court to be recognised and declared enforceable in Greece, the court will also examine whether such decision meets certain procedural and factual standards in accordance with articles 323 and 905 of the GCCP.

15 International Arbitration

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

As a general rule, before Greek courts enter into the essence of a dispute they are obliged to review whether they have jurisdiction in the specific case. Therefore, given that the parties to the dispute have agreed to an arbitration clause, Greek courts may decline their competence in favour of an arbitration court. However, in order for the court to proceed in such an action it has to investigate the validity of the arbitration clause, ruling whether the contracting parties have the right to freely subject the dispute at stake to arbitration, which is the case in non-arbitrable disputes under Greek law.

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

Greece is a contracting state to the New York Convention. Furthermore, Greece is a contracting member of the International Centre for the Settlement of Investment Disputes ("ICSID").

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

Pursuant to article 867 of the GCCP, labour law disputes are clearly exempted from arbitration procedures.

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

According to article 31 par. 1 of law 3389/2005 on PPPs, every dispute arising from the execution, interpretation or validity of a Partnership Agreement or its auxiliary agreements (*parepomena symfona*), is mandatorily subject to arbitration proceedings. The Partnership Agreement must provide for the application of arbitration rules of the GCCP and should also include the rules regarding the selection of arbitrators, the location of the arbitration tribunal and the language of the procedure. The arbitration award is not subject to legal remedies and can be executed without any previous ruling from the regular courts.

16 Change of Law / Political Risk

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

There have been calls for political risk protections on some occasions and depending on any state guarantees which may have been granted for the projects. Direct agreements are the typical method used for the provision of such guarantees.

17 Tax

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

Pursuant to the provisions of the new Greek Income Tax Code (applicable on tax years commencing as of 1 January 2014), any legal entity which has its tax residence or maintains a permanent establishment in Greece is obliged to withhold tax at a rate of 15% on interest payments to domestic or foreign lenders, without prejudice to the provisions of the applicable double tax treaty. No withholding is effected on interest payments paid to affiliated legal entities which meet the preconditions set in the Directive 2003/49/EU. In particular, the interest payments deriving from bank loans, late interests included, are exempted from withholding tax. With respect to interest from bond loans, the laws granting exemption for foreign investors have been abolished; therefore such income is subject to tax withholding. The term "interest", as it is determined in the new Greek Income Tax Code, consists of any income accruing from any kind of claims, whether they are secured through a mortgage or not. In that respect it may be argued that the proceeds of a claim under a guarantee or the proceeds of enforcing security, to the extent that they constitute interest income, are subject to tax as above.

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

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

Loans and credits provided by domestic or foreign banks and credit institutions are subject to the contribution set out in law 128/1975 (at a rate of 0.60%). Loans granted by Greek banks and any supplementary agreement (e.g. securities, etc.) are exempt from stamp duty. The same exemptions apply to loans (including interest and supplementary agreements) granted by foreign banks, irrespective of the location of conclusion and payment of the respective agreements. Ordinary loans concluded and/or executed in Greece are subject to the respective stamp duty, whereas bond loans of law 3156/2003 are exempted from the contribution.

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18 Other Matters

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

The matters outlined above address the most important considerations to be taken into account. However, please note that all the above are subject to the transfer of capital restrictions imposed on all credit institutions duly operating in Greece on 28 June 2015, pursuant to which, transfer of capital abroad is prohibited, including orders for transfers of capital to accounts held with credit institutions abroad, subject however to a number of specific exemptions. As the capital restrictions currently stand, as per the provisions of the legislative act (Official Government Gazette issue A' no. 84/18.07.2015) as has been amended so far and ratified by law 4350/2015 (the said restrictions have been relaxed since June and are expected to be further relaxed within the coming months), a transfer of funds from Greece abroad not falling under the scope of any particular exemption stipulated by law can only be performed upon specific request and subsequent permission thereto. However, cross-border transfer transactions regarding the credit of an account in Greece are permitted. As regards the money transferred that way, the legislative act (Official Government Gazette issue A' no. 84/18.07.2015) as has been amended so far and ratified by law 4350/2015 explicitly states that such money can be re-transferred to a bank account held in a credit institution abroad, without prior permission.

A special "Committee for the Approval of Banking Transactions" has been established within the Greek Treasury to perform the role of examining such requests, while special subcommittees have been established within each credit institution in order to facilitate this process. Among the various requests for outbound transfers of capital, priority is given to those regarded as necessary for the preservation of public and/or social interests, as for example payment of hospital expenses and/or purchase of medicines.

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

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

19 Islamic Finance

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

This is not applicable in Greece.

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

This is not applicable in Greece.

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

This is not applicable in Greece.

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