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Greece

SECURITISATION

Contributing firm

Your Legal Partners

Katerina Christodoulou

Partner | katerina.christodoulou@yourlegalpartners.gr

Fotini Mavrikaki

Senior Associate | fotini.mavrikaki@yourlegalpartners.gr

This country-specific Q&A provides an overview of securitisation laws and regulations applicable in Greece.

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GREECE
SECURITISATION

1. How active is the securitisation market in your jurisdiction? What types of securitisations are typical?

The securitisation market in Greece has evolved since 2003, when Greek law 3156/2003 (articles 10 and 14) was enacted (the **Greek Securitisation Law**). Securitisation has been used by banks as a tool to raise financing (between 2003-2007) and during the financial crisis to gain liquidity through retained deals (between 2007-2016). Post-crisis, a special Greek law 4354/2015 on non-performing loans (the **NPL Law**) was passed to deal with the acquisition of NPLs which has been expanded to cover also acquisition of performing loans. Although NPL Law applies now in parallel with Greek Securitisation Law, the latter remains the preferred tool for disposal of NPLs by banks, especially given that since December 2019 Hercules, the Greek State guarantee scheme of up to 12 billion Euro, has been put in place for banking securitisations following EU Commission clearance, applying until April 10th 2020. An extended State guarantee programme "Hercules II" up to 12 billion Euro is being currently discussed by the Greek government.

Several securitisations of NPL portfolios have been launched since 2017 and have attracted great investors' interest.

Programme Hercules and the imperative need for banks to reduce exposures from NPLs are expected to pave the way for future securitisation transactions in the Greek market.

Greek Securitisation Law allows securitisation of real estate However, there have been no real estate securitisations in Greece, given that the relevant framework is quite restrictive. In addition, non-banking securitisations are not common in Greece. Only auto rentals receivables securitisations have been successfully closed.

As regards securitised banking receivables the most common ones are mortgage loans, corporate loans, bond loans, leasing receivables, as well as credit card and other revolving credit receivables.

2. What assets can be securitised (and are there assets which are prohibited from being securitised)?

Greek law provides for the securitisation of all business claims, existing or future or conditional, towards any third party, including consumers, originated and resulting from the business activity of a commercial entity domiciled in Greece or a non-Greek resident having an establishment in Greece. The securitised claims should be identifiable or able to be identified, namely they should be described in a clear and unambiguous manner. They are transferred together with any and all ancillary rights, collateral and other related rights, including formative rights (i.e. rights to terminate, amend the underlying legal relationship). The transfer under the Securitisation Law overrides any assignment restrictions found in the receivables' contracts.

Real estate properties can be also securitised, under specific conditions.

A special Greek law 2801/2000 governs securitisation of State receivables.

3. What legislation governs securitisation in your jurisdiction? What transactions fall within the scope of this legislation?

Securitisation in Greece is governed by the Greek Securitisation Law in conjunction with the general provisions of articles 513 et seq. and 455 et seq. of the Greek Civil Code (the **GCC**), while the Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 (the **EU Securitisation Regulation**) laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (the **STS Securitisation**) is also applicable.

The Greek Securitisation Law regulates the transfer of business claims or real estate properties by way of sale, by means of a written agreement between the seller and the purchaser in combination with the issue and offer, by private placement only, of notes, the repayment of which is funded by either (i) the proceeds of the transferred business claims or (ii) loans, credits or financial derivative agreements. The seller should be a merchant domiciled or operating through a permanent establishment in Greece and the purchaser should be a special purpose entity established in Greece or abroad with the sole purpose to acquire business claims and issue the notes.

4. Give a brief overview of the typical legal structures used in your jurisdiction for securitisations and key parties involved.

In Greece, securitisation is a more common option for the banking sector that follows the requirements of art. 244 of Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (the **CRR**) and aims at true sale acquisitions and, with the participation of third party investors, a significant risk transfer and accounting de-recognition.

Typically the following entities are involved in the securitisation transaction:

- The seller of the receivables (please see below under question 6).
- The issuer, a special purpose vehicle (the **SPV**) that acquires the receivables and issues the notes backed by them (please see below under question 6).
- The servicer. The Greek Securitisation Law provides that collection and servicing of the transferred receivables may be delegated to the seller in its capacity as servicer or to a credit/financial institution of the European Economic Area (having a permanent establishment in Greece, if the receivables are obligations of consumers, payable in Greece) or a third party which has either guaranteed or had undertaken collection of the receivables prior to the completion of the securitisation. Regulated servicers established and licensed by the Bank of Greece under the NPL Law qualify as financial institutions, and therefore are permitted to act also as servicers.
- Underwriters/arrangers, usually investment banks which provide advice on the structure and/or market and facilitate the sale of the notes.
- Trustees. Although the concept of trust is not recognised in Greek legal system, the role of the trustee under foreign law is recognised in Greek securitisations. Trustees hold security and benefit of covenants in favor of secured parties and are entitled to enforce such security.
- Investors, who purchase the notes. The issued notes are subscribed for and placed privately, i.e. to a limited number of persons not exceeding 150.
- Cash mangers and paying agents ensure cash flows and proper payments by the SPV.

5. Which body is responsible for regulating securitisation in your jurisdiction?

In principle, in Greece there is no regulatory authority responsible for securitisation transactions performed pursuant to the Greek Securitisation Law.

Nevertheless, compliance of an involved party with the individual provisions of the EU Securitisation Regulation is supervised by the authority that is in general responsible for the supervision of same party, depending on its activity. I.e, in general (i) the European Central Bank, as regards systemic credit institutions; (ii) the Bank of Greece, for non-systemic credit institutions and insurance or reinsurance undertakings; and (iii) the Hellenic Capital Market Committee, supervising alternative investment funds (AIFs), AIF management entities, undertakings for collective investment in transferable securities (UCITS) or UCITS management entities.

Specifically in respect with STS Securitisations under art. 18-27 of the EU Securitisation Regulation, the supervision of the sellers', originators' and SPVs' compliance with same provisions of the EU Securitisation Regulation and the imposition of the administrative sanctions and remedial measures of art. 32 of EU Securitisation Regulation is shared, pursuant to Greek law 4706/2020 (art. 69-70), between the Bank of Greece and the Hellenic Capital Market Committee.

The Hellenic Capital Market Committee is also responsible for granting authorisation to third party entities used by the seller, originator or SPV to verify compliance of a securitisation with the STS requirements of the EU Securitisation Regulation, according to art. 27-28 of the latter, and supervising such entities.

6. Are there regulatory or other limitations on the nature of entities that may participate in a securitisation (either on the sell side or the buy side)?

In case of securitisation of business claims, the seller can be any merchant residing or being permanently established in Greece, whereas in real estate securitisation the seller can only be the Greek State or another public sector entity, a credit institution, an insurance company or a société anonyme thereof.

The purchaser and transferee of receivables (and issuer of the notes) within a securitisation transaction is always an SPV, i.e. an entity established solely for the purpose of acquiring the securitised assets and issuing the notes, established either in Greece or abroad. Securitisation SPVs established in Greece should have the form of a company limited by shares (*société anonyme*) and be subject to the laws governing this corporate form. According to Greek law, a societe anonyme cannot be an orphan vehicle and its shares are mandatorily registered, but no other requirement is set by the Greek Securitisation Law in respect with the shareholding of the SPV. There are no adverse implications in case the SPV is established abroad, other than the obligation of the SPV to assign the servicing, administration and collection of the receivables towards consumers to a duly licensed servicer established in Greece. Usually in securitisation transactions in Greece, SPVs are structured offshore as orphan entities (typically in countries where favourable double taxation avoidance treaties are in force), ensuring that payments from debtors to the SPV can be made free of withholding tax, as well as mitigating the risk of regulatory and accounting issues.

7. Does your jurisdiction have a concept of “simple, transparent and comparable” securitisations, following the BCBS recommendations?

EU Securitisation Regulation is directly applicable in Greece, having introduced a framework for STS Securitisations. Compliance of securitisation parties, i.e. the seller, the originator and the SPV, with such STS requirements is supervised in Greece by the Bank of Greece or the Hellenic Capital Market Committee, as the case may be (please see above under question 5).

8. Does your jurisdiction distinguish between private and public securitisations?

Under the Securitisation Law the notes must be disposed through a private placement, i.e. to a limited number of persons not exceeding 150. However Greek Securitisation Law does not provide which will be the legal consequences if such clause is breached and the notes are offered publicly. In any case listing of the notes Is not prohibited by the Greek Securitisation Law.

9. Are there registration, authorisation or other filing requirements in relation to securitisations in your jurisdiction (either in relation to participants or transactions themselves)?

In principle, the main parties involved in securitisation transactions do not require a license or authorisation in order to conclude a securitisation. As regards the servicer, please see above under question 4.

As regards the consummation of a securitisation transaction, the Greek Securitisation Law provides for certain perfection formalities that should be satisfied, including the execution of a written sale and assignment agreement between the seller and the purchaser. Typically in Greek securitisations a sale agreement governed by foreign law and an executory assignment in rem agreement governed by Greek law are signed between the seller and the SPV.

The main condition for the perfection of the assignment of the receivables against the obligors and third parties is, pursuant to the general provisions of GCC, the notification of the obligors by either the assignor or the assignee. In securitisation transactions, such notification is effected with the registration of the summary of the assignment and transfer agreement in the public registry book of article 3 of Greek law 2844/2000 kept with the pledge registry of the registered seat of the originator. Upon completion of the assignment formalities provided either under the GCC or the Securitisation Law, the transfer of the relevant receivables can be invoked both against the obligor and third parties. Prior to the notification (or the registration in case of securitisation transactions) the assignee/SPV bears the risk of the release of an obligor from its obligations upon payment to the assignor/seller and the risk of seizure of the assigned/securitised claim by third party creditors of the assignor, as well as the claw back risk, since the assigned claim will be considered part of the assignor’s/seller’s bankruptcy estate.

The same summary registration with the competent pledge registry according to article 3 of Greek law

2844/2000 is required for the servicing agreement between the SPV and the servicer, in order that obligors are notified of the entity assigned with the collection of the receivables.

10. What are the disclosure requirements for public securitisations?

Notwithstanding the requirement of Greek Securitisation Law for distribution of notes only through private placement (please see above under question 8), any public disposal of notes should comply with the disclosure requirements of article 7 of the EU Securitisation Regulation and Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

11. Does your jurisdiction require securitising entities to retain risk? How is this done?

Greece follows the risk retention requirements found in the relevant European legislation. In this respect, in the securitisation transactions completed in the recent years (and previously) under the CRR and the EU Securitisation Regulation, the originators undertake to retain, on an ongoing basis, a material net economic interest of not less than 5% in the securitisation (representing downside risk and economic outlay). Such retention comprises as at the closing date of the transaction by the purchase and holding of an interest in the first loss tranche which is equal to at least 5% of the nominal value of the securitised exposures as at closing.

12. Do investors have regulatory obligations to conduct due diligence before investing?

Contrary to the Greek Securitisation Law, the EU Securitisation Regulation requires from institutional investors to carry out, prior to any investment, an extensive due diligence enabling them, among others, to obtain a comprehensive and thorough understanding of the securitisation position and its underlying exposures and assess the risks involved.

13. What penalties are securitisation participants subject to for breaching regulatory obligations?

In case of breach by an originator or a securitisation SPV of the applicable requirements under the EU Securitisation Regulation, Greece applies the minimum level of administrative sanctions and remedial measures of art. 32 of EU Securitisation Regulation, i.e. among others, the publication of a public statement specifying the identity of the person concerned and the nature of the infringement, a temporary ban on management functions for the management of the legal entity, administrative pecuniary sanctions up to twice the amount of the benefit derived from the breach, or up to €5,000,000, even against natural persons, or, for a legal entity, up to 10% of its net turnover of the last approved financial statements etc. Despite the discretion provided by the EU Securitisation Regulation, Greece has not imposed any specific criminal sanctions.

14. Are there regulatory or practical restrictions on the nature of securitisation SPVs?

Please see above under question 6.

15. How are securitisation SPVs made bankruptcy remote?

Generally, if the seller is subject to insolvency proceedings, the assets of the SPV are not included in the seller's bankruptcy estate. The SPV has a separate legal personality and this cannot be lifted.

Furthermore, the Greek Securitisation Law provides enhanced protection as regards bankruptcy following the registration of the receivables' assignment agreement with the competent pledge registry.

Namely,

- the Greek Securitisation Law grants the noteholders with a special 'bankruptcy-proof' privilege. That is pledge operating by law over the securitised receivables in favour of the noteholders and other beneficiaries, which is automatically established upon the registration of the receivables' assignment agreement. Subject to true sale characterisation (please see below under question 17), the validity of the sale of the receivables and the establishment of the pledge operated by law survive any bankruptcy challenges and claw back risk in relation to any insolvency proceedings against the seller, the SPV, the servicer or any guarantor or beneficiary of other ancillary rights;

- the collections made by the Servicer are segregated from the servicer's bankruptcy estate and cannot be seized, set -off or made subject to any other lien by the servicer or his creditors.

16. What are the key forms of credit support in your jurisdiction?

Forms of credit enhancement most commonly used in Greek securitisations are:

- notes' tranching (senior notes and junior notes that are subordinated to senior notes);
- cash reserves;
- limited recourse loans;
- overcollateralisation (receivables of a greater value than the notes issued).

Although the Greek Securitisation Law does not provide for specific credit enhancement mechanism, the choice made may affect the capital treatment of a banking securitisation.

17. How may the transfer of assets be effected, in particular to achieve a 'true sale'? Must the obligors be notified?

In order to achieve a 'true sale': (i) the assignment of the receivables should take place by way of sale (not for example by way of security), since transfer of receivables by means of security (*katepisteftiki metavivasi* in Greek) is expressly prohibited; (ii) the receivables' assignment agreement should include such terms that provide for a true, final and unconditional transfer of receivables (i.e. the securitisation SPV becomes the exclusive owner of and retains exclusive control over the receivables, being entitled to receive payments in respect with the receivables, discharge the obligors and take action directly against them), subject to any risk retention (please see above under question 11); (iii) SPV is entitled to dispose the receivables without the seller's consent; (iv) the seller is not under the obligation to repurchase the receivables other than for limited reasons, mostly in relation to non-compliance of receivables with the eligibility criteria. Nevertheless, it is explicitly permitted to adjust or defer the purchase price and to rescind the sale agreement according to its provisions, as well as to enter into subsequent agreements for the repurchase by the seller of the receivables.

Additional conditions apply in the context of true sale of banking receivables for capital treatment of securitisation.

Notification of the obligors is a requirement for the perfection for the sale and transfer agreement.

18. In what circumstances might the transfer of assets be challenged by a court in your jurisdiction?

Only in case the true sale character of the transaction is challenged, and the transaction is recharacterised to secured loan by way of securitisation, as well as in case the securitisation is used for fraudulent purposes.

19. Are there data protection or confidentiality measures protecting obligors in a securitisation?

Personal data protection in Greece is governed by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the **GDPR**) and Greek law 4624/2019 containing provisions similar to the GDPR and individual obligors –as any other individual- enjoy their full protection.

As regards the execution of a securitisation transaction and transfer of receivables (and relating personal data), the Greek Securitisation Law (para. 21 of article 10) provides that, to the extent required for the purposes of the securitisation transaction, the processing of personal data of the obligors does not require the prior written consent of the latter, nor the prior approval of the Greek Data Protection Authority, providing therefore the legal basis of the processing of the obligors' personal data of the.

However, under the GDPR, individual obligors should be notified of the transfer of their personal data to the SPV and the servicer in accordance with the provisions of GDPR.

20. Is the conduct of credit rating agencies regulated?

Credit rating agencies are governed by Regulation (EC) no 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, as amended from time to time, applying directly in Greece and the Greek law 3867/2010.

The Hellenic Capital Market Committee is the Greek authority responsible for the registration and supervision of credit rating agencies established in Greece and the imposition of fines and other measures, along with the

European Securities and Markets Authority (ESMA).

21. Are there taxation considerations in your jurisdiction for originators, securitisation SPVs and investors?

Securitisation is a useful tool for transfer of claims and offers tax exemptions, since both the sale and transfer of receivables within a securitisation transaction under the Greek Securitisation Law and the collection of such receivables by the SPV are exempted from Value Added Tax and any direct or indirect tax, including stamp duty, whereas the securitisation SPV (which is not established nor has a permanent establishment in Greece) will not be subject to taxation in Greece in respect of its income from interest, provided that a favorable bilateral treaty for the avoidance of double taxation between Greece and the place of establishment SPV applies.

22. To what extent does the legal and regulatory framework for securitisations in your jurisdiction allow for global or cross-border transactions?

Neither global nor cross-border securitisation transactions are impeded by the Greek legal and regulatory framework. The sole requirement for non-domestic SPVs purchasing and acquiring consumer securitised receivables is the appointment of a servicer lawfully established and operating in Greece.

23. To what extent has the securitisation market in your jurisdiction transitioned from IBORs to near risk-free interest rates?

The Greek securitisation market is focused on EURIBOR or fixed interest rates and documentation of recent transactions does not include provisions for the transition to alternative rates when IBORs are no longer available.

24. How could the legal and regulatory framework for securitisations be improved in your jurisdiction?

In general the Greek Securitisation Law is clear, simple and flexible, able to include a variety of transaction structures, while the challenge is to manage to meet the requirements of the EU Securitisation Regulation, the CRR and other European framework.

Going forward the expansion of the Hercules State guarantee programme would allow securitisation to continue to play dominant role in the Greek NPL market.

25. To what extent has the impact of COVID-19 changed practice and regulation in relation to securitisations in your jurisdiction?

The outbreak of COVID-19 and the state measures imposed to tackle its consequences have led to forbearance measures applying also in Greece aiming at reducing the economic burden on performing individuals and businesses and at the same time resulting in the extension of maturity of loans, lease and other obligations and therefore and a decline in the creation of receivables that can be included in a securitisation portfolio and in the collection rate of claims.

Furthermore, whereas COVID-19 could be considered as an event of force majeure relieving from the fulfillment of contractual obligations arising out of past securitisations, that is not the case in new securitisation transactions (with COVID-19 pandemic already existing at the date of signing). Therefore, prior to entering into a new securitisation transaction, the contracting parties should give due thought to the new circumstances and consider placing stronger requirements, i.e. on the amount of reserves, the size of securitised asset portfolio and credit support measures. Especially a third party investor/noteholder should be aware of and assess the potential impact that COVID-19 may have on the investment in the notes.

However, though COVID-19 has already had a severe impact on almost all sectors of the economy, in these challenging times securitisation transactions can be a useful tool especially for credit institutions in order to help them free up bank capital for further lending and allow a broader range of investors to fund the economic recovery.

Contributors

Katerina Christodoulou
Partner
katerina.christodoulou@yourlegalpartners.gr

Fotini Mavrikaki
Senior Associate
fotini.mavrikaki@yourlegalpartners.gr