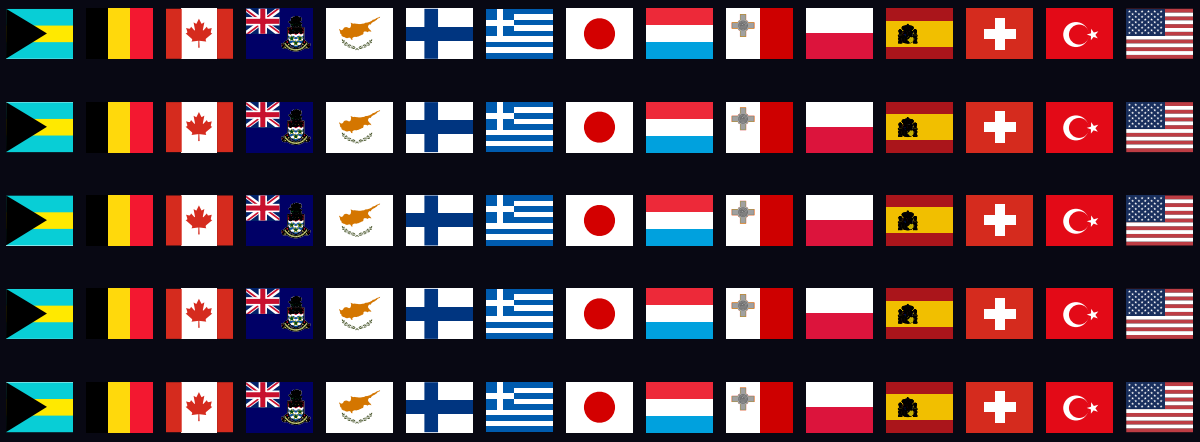
LOANS & SECURED FINANCING

Greece



LEXOLOGY
Getting The Deal Through

Consulting editor
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Loans & Secured Financing

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Quick reference guide enabling side-by-side comparison of local insights into general issues (bank loans versus debt securities; common forms of bank loan facility; bridge facilities; role of agents, trustees and lenders; governing laws); regulation (capital, liquidity and disclosure requirements; use of loan proceeds; cross-border lending; interest rate and currency restrictions); security interests and guarantees; the impact of fraudulent conveyance and similar doctrines on the structure of bank loan financings; intercreditor matters; loan terms and structures; and recent trends.

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Table of contents

GENERAL FRAMEWORK

Jurisdictional pros and cons

Forms

Investors

Bridge facilities

Role of agents and trustees

Role of lenders

Governing law

REGULATION

Capital and liquidity requirements

Disclosure requirements

Use of loan proceeds

Cross-border lending

Debtor's leverage profile

Interest rates

Currency restrictions

Other regulations

SECURITY INTERESTS AND GUARANTEES

Collateral and guarantee support

Commonly pledged assets

Creating a security interest

Perfecting a security interest

Future-acquired assets

Maintenance

Release

Non-fulfilment of guarantee obligations

Parallel debt requirements

Enforcement

Fraudulent conveyance and similar doctrines

INTERCREDITOR MATTERS

Payment and lien subordination arrangements

Creditor groups
Rights of junior creditors
Pari passu creditors

LOAN DOCUMENT TERMS

Standard forms and documentation
Pricing and interest rate structures
Other loan yield determinants
Yield protection provisions
Accordion provisions and side-car financings
Financial maintenance covenants
Other covenants
Mandatory prepayment
Debtor's indemnification and expense reimbursement

UPDATE AND TRENDS

Key developments

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Greece

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GENERAL FRAMEWORK

Jurisdictional pros and cons

What are the primary advantages and disadvantages in your jurisdiction of incurring indebtedness in the form of bank loans versus debt securities?

Bank loans – advantages

A bank loan or credit facility allows for more flexibility in connection with the form and purpose of financing. For instance, it can incorporate a revolving mechanism; accommodate the issue of standby letters of credit or bank guarantees within the framework of the loan or credit facility; provide for invoice or negotiable instruments discounting or other factoring arrangements; and also accommodate short-term working capital needs, in parallel with medium-term or long-term financing needs that may be required for capital expenditure or in the context of project finance or asset finance transactions.

Where the financing requires more detailed and ongoing monitoring provisions (due to the purpose of the financing or the financial condition of the borrower), banks that are active in the Greek market are more likely to assume the administrative cost and risk of that monitoring.

Loan or credit facilities granted by banks operating in Greece (whether local banks or foreign banks operating in Greece through a permanent establishment or on a cross-border basis in accordance with European Union (EU) passport provisions) are exempt from stamp duty and are also exempt from withholding tax on interest.

Bank loans – disadvantages

Greek law does not recognise the notion of a trust as far as security over assets located in Greece is concerned. Parallel debt language can be used in syndicated loan facilities, in order for the security interests to be held by the security agent as agent and trustee and also as a joint and several creditor with the other secured lenders. However, parallel debt language only has a contractual effect as between the parties and, therefore, in case of insolvency of the security agent, the other lenders are not protected in connection with the security interests held in the name of the security agent or cash collected by the security agent.

Bank loan and credit facilities are subject to a special levy (at the rate of 0.6 per cent per annum on the facility amount outstanding from time to time), which is (as a matter of standard Greek market practice) borne by the borrower, by way of a percentage over and above the applicable interest rate.

Mortgages, non-possessory pledges and floating charges over assets located in Greece require registration, which is subject to an ad valorem registration duty at the rate of 0.775 per cent on the secured amount.

The stamp duty exemption mentioned above only benefits those lenders that are banks licensed to operate in Greece (ie, Greek banks, EU banks providing banking services on cross-border bases or through permanent establishments, and non-EU banks providing banking services through permanent establishments); therefore, where non-bank lenders participate in a bank loan facility, there may be a need for the facility structure to accommodate fronting banks and funded participation arrangements.

From the borrowers' perspective, bank loan and credit facilities include more detailed ongoing financial and other covenants and more restrictive provisions than listed debt securities not necessarily intended to only attract bank lenders or other regulated lenders.

Debt securities – advantages

Under Greek law (articles 59 et seq of Law 4548/2018, with effect from 1 January and, previously, Law 3156/2003), a 'bond loan' is a loan represented by bonds (similar to a German Schuldschein); therefore, bonds issued under a Greek bond loan are debt securities, which can be subscribed by private placement or through a public offering (subject to the provisions applicable to public offerings of securities).

Any security for a bond loan must be created in the name of the bondholders' agent for the benefit of the bondholders and, as a matter of Greek law, any such security and any cash collections do not form part of the bondholders' agent insolvency estate. Therefore, as a matter of Greek banking practice, where the borrower is a Greek société anonyme (SA), a bond loan facility structure can be used to address the security structure disadvantage of bank loan facilities (see above).

Furthermore, a bond loan structure has further advantages in terms of substantial mitigation of mandatory costs (article 14 of Law 3156/2003, which continues to apply to bond loans). In particular, a bond loan benefits from:

- full stamp duty exemption, independently of whether the investors are banks or non-banks (as opposed to what applies to a standard bank loan facility, see above);
- a levy exemption (see above), provided that the bonds are not listed on any market or exchange, or are listed on the Athens Exchange; and
- in respect of security interests subject to registration, a minimal fixed registration duty of €100 per registration applies (as opposed to the ad valorem registration duty payable in respect of security for standard bank loan financing – see above).

Although the provisions of Law 3156/2003 and Law 4548/2018 were primarily intended to advance the Greek capital market, the vast majority of bond loans are subscribed by private placement, with the holders of bonds being in most cases banks and in some cases other investors as well (such as hedge funds, foreign pension funds or affiliates of the issuer). As a matter of Greek market practice, following the enactment of Law 3156/2003, most term loan facilities to Greek corporates have been structured as bond loans, due to the cost and structural advantages of a bond loan facility as compared to a standard term loan facility; many bond loan structures of this type have so far involved both foreign and domestic lenders. This continues also after the entry into force of Law 4548/2018.

Apart from Greek bond loans, large Greek corporates wishing to attract international non-bank investors may issue debt securities listed on foreign exchanges or debt markets. Primarily due to marketability considerations, these debt securities are normally issued by an English subsidiary company of the Greek corporate, so are governed by English law and are guaranteed by the parent Greek corporate.

Debt securities – disadvantages

Interest payments by a Greek obligor under debt securities (whether foreign debt securities or bonds under Greek law bond loans) are subject to Greek withholding tax, at the rate provided for in any applicable double taxation treaty or (in the absence of a double taxation treaty) at the rate applicable from time to time under the Greek tax legislation. This disadvantage can be addressed through appropriate gross-up provisions.

As Greek law and market practice now stands, non-listed bonds under a Greek law bond loan facility are issued in material form. Advances to the issuer must be made against issue and physical delivery of the bonds to the investors (whether directly or, where a bondholders' agent has been appointed, through that agent) and, in order for the investors to exercise their claims under the bonds, they must present their bonds to the issuer (or, where a bondholders' agent has been appointed, to that agent).

In case of a transfer of bonds, perfection of the transfer requires physical delivery of the bonds and, where the bonds are registered, registration of the transfer in the register maintained by the issuer (or, where an agent has been

appointed, the agent). This may be problematic for practical reasons where any revolving mechanism for the financing would result in excessive administrative cost and risks due to a need to often deliver and present bonds.

Interest payments to investors that are tax resident in Greece or acting through a permanent establishment in Greece are subject to Greek withholding tax (currently at the rate of 15 per cent). Interest payments to investors that are tax resident outside Greece and without permanent establishments in Greece are subject to Greek withholding tax at the rate provided for in the applicable double taxation treaty between Greece and the jurisdiction of tax residence of the investor (subject to provision by the investor to the Greek obligor (on any appointed agent) of a tax residence certificate) and, in the absence of a double taxation treaty, at the rate applicable at the relevant time under Greek law for interest payments on debt securities.

Law stated - 21 April 2022

Forms

What are the most common forms of bank loan facilities? Discuss any other types of facilities commonly made available to the debtor in addition to, or as part of, the bank loan facilities.

Revolving credit facilities, term loan facilities, standby letter of credit facilities, bank guarantee credit facilities, invoice discounting facilities and other factoring facilities are the most common forms of bank loan and credit facilities in the Greek market. Banker's acceptances are not used in the Greek market. Swingline facilities and competitive bid revolving credit facilities are not used in exclusively Greek deals.

Law stated - 21 April 2022

Investors

Describe the types of investors that participate in bank loan financings and the overlap with the investors that participate in debt securities financings.

Hedge funds and foreign pension funds have relatively recently participated in certain financing transactions, usually as mezzanine lenders (with the banks acting as senior lenders) but also as senior lenders (especially with respect to new money in the context of restructuring arrangements).

Law stated - 21 April 2022

How are the terms of a bank loan facility affected by the type of investors participating in such facility?

From our experience, where different types of investors participate in a bank loan facility, the facility is more likely to include a senior tranche, a mezzanine tranche and a junior tranche, in which case the relations between the lenders are regulated by an intercreditor agreement.

Law stated - 21 April 2022

Bridge facilities

Are bank loan facilities used as 'bridges' to permanent debt security financings? How do the structure and terms of bridge facilities deviate from those of a typical bank loan facility?

Bank loan facilities have often been used as 'bridges' to permanent debt security financings or medium or long-term bank loans. As a matter of Greek banking practice, in these cases corporate guarantees by the parent company or other affiliates of the borrower are more likely to secure the 'bridge' facility, as opposed to other security interests (which are normally expected to be granted at a later stage, to secure the permanent financing transaction).

Law stated - 21 April 2022

Role of agents and trustees

What role do agents or trustees play in administering bank loan facilities with multiple investors?

As a matter of Greek banking practice, agents in bank loan facilities with multiple investors can carry on various roles, depending on the needs of the transaction and the tasks involved. For instance, apart from a facility agent and security agent, there may be a need to also provide an intercreditor agent. In the context of a debt securities transaction, a paying agent is very common.

There is no requirement for the same entity to carry on all agent roles in the same facility. Different entities may act as administrative agent, security agent or intercreditor agent. As a matter of Greek market practice, each such agent for a bank loan facility is a bank selected by the lenders to take on the relevant agency role.

Where the facility is structured as a Greek law bond loan, a facility or paying agent is very common. Furthermore, there is a requirement to appoint a bondholders' agent (which need not necessarily be the same entity as any appointed facility agent) where the bond loan is secured or where the bondholders are organised as a group of bondholders. In addition, the parties may wish to appoint a bondholders' agent anyway, even where this may not be required by law for that particular bond loan transaction. Where a bondholders' agent is appointed, a qualifying bondholders' agent must meet specific criteria under Law 4548/2018, unless there is only one bondholder, in which case the sole bondholder also qualifies to act as bondholder agent in order to hold the security for the bond loan, unless the sole bondholder is an affiliate of the issuer of the bond loan. Furthermore, pursuant to Law 4548/2018, if the bond loan is governed by foreign law, the bondholder agent may be the entity that, under the governing foreign law, qualifies to take and hold security for the bondholders.

Law stated - 21 April 2022

Role of lenders

Describe the primary roles and typical fees of the financial institutions that arrange and syndicate bank loan facilities.

From our experience, the primary roles of the financial institutions that arrange and syndicate bank loan facilities are consistent with the international financing practice.

The same applies to the type of fees that are expected in these transactions, which fees are documented in mandate letters, fee letters or the loan facility agreement itself.

Law stated - 21 April 2022

Governing law

In cross-border transactions or secured transactions involving guarantees or collateral from entities organised in multiple jurisdictions, which jurisdiction's laws govern the bank loan documentation?

The law of the place where the relevant assets are located will be the law governing the security interest in question. It is worth noting that, as a matter of Greek law, non-listed shares in a Greek company in the form of an SA are treated as a tangible movable asset and, therefore, are not deemed to be located in Greece. Therefore, under the Greek private international law rules, a security interest over such shares may be governed by foreign law, provided that the shares are delivered and kept into custody by the secured lender or an appointed custodian in the relevant foreign jurisdiction.

Law stated - 21 April 2022

REGULATION

Capital and liquidity requirements

Describe how capital and liquidity requirements impact the structure of bank loan facilities, including the availability of related facilities.

EU Regulation 575/2013 applies to Greek banks with respect to capital, liquidity and other (such as large exposures) requirements. Therefore, availability, reporting and monitoring requirements are not different from the requirements that apply to banks licensed and operating throughout the EU. The Single Supervision Mechanism (SSM) is the competent supervisory authority for the four Greek systemic banks (Alpha Bank, Eurobank, National Bank of Greece and Piraeus Bank); the Bank of Greece (Greece's central bank), which remains the Greek supervisory authority for the non-systemic Greek banks, assists the SSM.

Law stated - 21 April 2022

Disclosure requirements

For public company debtors, are there disclosure requirements applicable to bank loan facilities?

Depending on the size and purpose of the relevant bank loan facility, disclosure requirements may apply for public company debtors in accordance with the regulations applicable at the relevant time.

Law stated - 21 April 2022

Use of loan proceeds

How is the use of bank loan proceeds by the debtor regulated? What liability could investors be exposed to if the debtor uses the proceeds contrary to regulations? Can investors mitigate their liability?

Anti-corruption and anti-money laundering regulations and any anti-terrorism sanctions binding on Greece are also binding on bank loan facilities granted by banks operating in Greece. Compliance with these regulations (and protection against relevant risks) is normally addressed through standard 'know-your-customer' (KYC) checks and also through due diligence on the purpose of the transaction and the business activities of borrowers and lenders.

Where the borrower is subject to special regulations for its business activities (such as public procurement, state aid restrictions, environmental protection or other licensing and supervision requirements), the loan facility documentation usually provides for specific representations and warranties and covenants intended to ensure ongoing compliance. The impact on the lenders of a breach by the borrower depends on the nature and scope of the requirements that have been breached. For instance, a breach of state aid restrictions affecting a guarantee or other security interest that would benefit the lenders would most likely directly affect the lenders' interests. Other breaches could, in principle, only indirectly affect the lenders (where the breach could have a material adverse effect on the ability of the borrower to

comply with its obligations under the loan facility), but normally would not expose the lenders to liability (except in the extraordinary case of wilful misconduct on the part of the lenders themselves).

Law stated - 21 April 2022

Cross-border lending

Are there regulations that limit an investor's ability to extend credit to debtors organised or operating in particular jurisdictions? What liability are investors exposed to if they lend to such debtors? Can the investors mitigate their liability?

Where a prohibition applies (as in the case of jurisdictions that are subject to sanctions), the investor will be liable in accordance with the legislation imposing that prohibition and will be exposed to the sanctions (including penalties, criminal sanctions and revocation of any applicable licence) provided for by the legislation imposing that prohibition.

Therefore, standard KYC and other due diligence checks are strongly advisable before reaching an agreement on a loan facility. Furthermore, the standard illegality provisions are often used in the Greek market to mitigate risks and liability where the prohibition was imposed after the granting of the loan or where the lenders could not reasonably be aware of an illegality affecting a particular loan facility transaction at the time they agreed to grant a loan.

Law stated - 21 April 2022

Debtor's leverage profile

Are there limitations on an investor's ability to extend credit to a debtor based on the debtor's leverage profile?

Limitations may apply to the borrower's ability, if it is a regulated entity subject to specific supervision requirements (eg, an insurance company); a breach of any such requirements would normally increase the credit risk of a lender and could also expose him or her to reputational risks, but would not necessarily affect the validity, legality, binding effect and enforceability of the loan facility (except in the extraordinary case of wilful misconduct on the part of the lender).

Insolvency is a more complex issue, as certain transactions and security interests may be at risk of rescission if they are concluded:

Security interests granted in favour of banks are normally protected, but this may not necessarily be the case where a secured bank was aware of the circumstances that would normally give rise to rescission. Therefore, it is in the interests of lenders (whether banks or non-banks) to conduct their standard financial due diligence in order to ensure that there are no circumstances that could expose them to legal or reputational risks.

Law stated - 21 April 2022

Interest rates

Do regulations limit the rate of interest that can be charged on bank loans?

Interest rates for bank loans are not subject to a legal maximum, with the exception of the default interest rate (which cannot exceed 2.5 percentage points over and above the normally applicable interest rate). Furthermore, compounding of accrued and unpaid interest may only apply where agreed in writing and (as far as Greek law is concerned) not earlier than at the end of six-monthly compounding periods.

The parties may freely select whether a fixed or floating interest rate will apply to a bank loan. Where they select a floating interest rate, that rate must be determined on the basis of an agreed clear and transparent formula (usually by reference to an interbank rate, such as Euribor, plus an agreed margin, which margin can be subject to adjustment on the basis of agreed clear and transparent criteria, for example, by referencing specific financial ratios).

Contrary to bank interest rates, non-bank interest rates are subject to a legal maximum (determined in accordance with a formula based on the European Central Bank discounting rate at the relevant time). Further to the entry into force of Law 4548/2018, the interest rate applicable to bond loans subscribed to by non-bank investors is treated in the same manner as the bank interest rate and, therefore, is not subject to the legal maximum non-bank interest rate.

Law stated - 21 April 2022

Currency restrictions

What limitations are there on investors funding bank loans in a currency other than the local currency?

No foreign currency limitations apply under Greek law in the context of multi-jurisdictional transactions. Furthermore, the capital controls imposed back in 2015 no longer apply.

Law stated - 21 April 2022

Other regulations

Describe any other regulatory requirements that have an impact on the structuring or the availability of bank loan facilities.

The facility structure selected will also determine the exact form of the documentation and, to a certain extent, its content as well, with a view to ensuring legality, validity, binding effect and enforceability of the facility and any security granted for the facility, and addressing mandatory cost parameters that may be relevant.

Law stated - 21 April 2022

SECURITY INTERESTS AND GUARANTEES

Collateral and guarantee support

Which entities in the organisational structure typically provide collateral and guarantee support for bank loan financings? Are there limitations on which entities in the organisational structure are permitted to provide such support?

Parent companies and holding companies are usual security providers in addition to (or instead of) the borrower itself.

Where the loan or credit facility is granted to a parent company and the lenders need to address structural subordination risks, upstream guarantees or other security may also be available on the part of a subsidiary or sister company. However, in such a case, specific requirements set by the company law applicable to the security provider must be complied with in order for that security to be legal, valid, binding and enforceable. Failure to comply with these requirements may result in invalidity of the upstream guarantee or other security. Furthermore, specific requirements are set by the company law in the case of financial assistance and any financial assistance granted in breach of such requirements would not be legal, valid, binding and enforceable.

Interested parties should seek specific legal advice in respect of any such guarantees or security arrangements,

including because Law 4548/2018 (articles 99 et seq) has introduced several amendments in the regime that previously applied to this type of arrangement (and generally to transactions between related parties).

Law stated - 21 April 2022

What types of obligations typically share with the bank loan obligations in the collateral and guarantee support? If so, are all such obligations equally and ratably covered by the collateral and guarantee support?

Swap and hedging obligations or treasury services obligations may benefit from the collateral and guarantee support granted for a bank loan facility, provided they are clearly specified as secured obligations in the security documents for the bank loan facility or in separate security documents.

Priority of secured creditors is determined by reference to the date of perfection of the relevant security interest. Where there are more secured creditors in the same security documents or more secured creditors under different security documents, the secured creditors can agree between themselves, the borrower and the security provider (if different from the borrower) the way in which they will enforce their security interest(s) and share the enforcement proceeds.

Law stated - 21 April 2022

Commonly pledged assets

Which categories of assets are commonly pledged to secure bank loan financings? Describe any limitations on the pledge of assets.

Real property, movable assets (including inventory, equipment, shares and debt instruments in physical form), dematerialised securities, bank accounts, insurance proceeds and trade or other receivables are the assets commonly offered as security for bank loan financings.

In respect of security offered by the borrower, there are no limitations, provided these assets are fully owned by the borrower and are not subject to a publicly registered negative pledge restriction, as long as the security is granted to secure a legal, valid, binding and enforceable obligation and has been duly approved and authorised by the appropriate corporate resolutions.

The only exceptions to this rule concern real property located near the Greek borders (in which case specific restrictions apply), and limitations applicable to security over certain assets owned by regulated companies, in each case in accordance with the legislation and regulation applicable to the relevant regulated companies; by way of example, insurance companies cannot create security over non-freely disposable assets, and financial lessors (whether banks or financial leasing companies) cannot create security over assets owned by them under a financial lease agreement.

Where the security provider is a third party being a legal entity, security may only be granted if permitted by the articles of association and specifically approved and authorised by appropriate corporate resolutions on the basis of specific corporate benefit. In addition to these requirements that generally apply to third-party security by legal entities, specific requirements apply to guarantees and security interests granted by affiliates (whether upstream or cross-stream) and guarantees and security interests constituting financial assistance granted by a Greek SA with a view to the acquisition of its own shares or shares in its direct or indirect parent. Furthermore, prohibitions apply to upstream security granted by limited companies if that security operates so as to circumvent subordination of loans granted to them by their partners.

It is worth noting that priority of security is determined by reference to priority of perfection of that security; any prior

ranking security interests will be satisfied prior to any subsequent ranking security interests. Satisfaction of secured creditors is subject to the provisions of the law concerning the ranking of generally privileged creditors and specific advice must be sought as to each type of generally privileged creditors.

Law stated - 21 April 2022

Creating a security interest

Describe the method of creating or attaching a security interest on the main categories of assets.

Security over real property is created by mortgage (by virtue of a notarial mortgage deed) or by mortgage prenotation (by virtue of an interim court judgment) and is perfected by registration in the public books of the competent land register or cadastre.

Security over movable assets is created by private pledge agreement; security in respect of tangible assets (including shares or debt instruments in physical form) is perfected by delivery of these assets to the pledgee or to a third-party custodian. In addition to physical delivery, a pledge over registered shares or bonds in physical form must be annotated in the register kept by the issuer of the registered shares or the bondholders' agent (as the case may be) and on the pledged shares or bonds certificate.

In respect of equipment (which needs to remain in the possession of the pledgor and may or may not be replaced by the pledgor) or inventory (which is of floating nature and is expected to be sold and replaced by the pledgor), security is created by a non-possessory pledge or floating charge (as the case may be) and perfected by registration in the public books held by the competent pledge register.

Security created over shares or bonds listed on the Athens Exchange is created by private agreement and perfected in accordance with the regulation of the Athens Securities Depositary applicable at the time of perfection.

Security over rights and claims (under bank accounts, insurance proceeds or trade receivables) is created by private agreement and perfected by notification to the debtor of the relevant claims. In respect of security over trade receivables arising from time to time, it is advisable to complete perfection by registration of the security in the public books of the competent pledge register (in addition to notification to the debtors).

Law stated - 21 April 2022

Perfecting a security interest

What steps are necessary to perfect a security interest on the main categories of assets? What are the consequences of failing to perfect a security interest?

If security is not duly perfected as required for the relevant security interest, security does not have effect as against all parties. Therefore, in case of insolvency of the security provider, the security assets continue to form part of the security provider's insolvency estate. Furthermore, pending perfection, there is a risk that another security interest may be created and perfected for the benefit of third-party creditors and thus have priority, or a risk that the security assets may be attached or seized by third-party creditors.

Law stated - 21 April 2022

Future-acquired assets

Can security interests extend to future-acquired assets? Can security interests secure future-incurred obligations?

Security over future-acquired assets can be validly agreed to extend to:

- additional shares that may be distributed in lieu of dividends or other distributions in respect of the originally pledged shares;
- dividends or other distributions in respect of pledged shares;
- new shares issued and distributed against cancellation of existing pledged shares, in case of a corporate transformation by a merger or division of the company being the issuer of the originally pledged shares;
- new or additional bonds issued for the originally pledged bonds (eg, PIK bonds) and interest or other return from pledged bonds;
- new or replacement tangible assets being subject to a non-possessory pledge or floating charge; and
- clearly determinable future claims falling within the scope of a pledge of receivables or other monetary claims.

In this regard, it is worth noting that no valid security can be created if it is purported to be created generally over 'all' future-acquired assets of the security provider (eg, 'all' real property assets or other assets). For the security to validly extend to future-acquired assets, the security document must be drafted so as to clearly specify what future-acquired assets the security will extend to, so that any such future-acquired assets are identifiable on the basis of the security document.

Future-incurred obligations require particular attention. Further drawings under an existing facility or drawings under a revolving facility can in principle benefit from the security (provided that such future drawings were contemplated in the original security document). However, future obligations arising under new contractual arrangements that may be entered in the future and that cannot be clearly determined on the basis of the original security document would not benefit from the security interests thereby created.

Law stated - 21 April 2022

Maintenance

Describe any maintenance requirements to avoid the automatic termination or expiration of security interests.

Registration of a non-possessory pledge or floating charge (or of a registrable pledge or security assignment over rights and claims) must be renewed after a 10-year period from the original registration.

Where a mortgage was registered in the public books of a land register and that land register is succeeded by a cadastre, a mortgagee will need to procure for registration of its mortgage in the public books of the cadastre. Such new registration is required for the maintenance of the mortgagee's right over the property and, once made, the priority of the originally registered property is fully protected.

Law stated - 21 April 2022

Release

Are security interests on an asset automatically released following its sale by the debtor? If so, are the releases mandated by law or contract?

In respect of security interests that are perfected by delivery of the asset to the pledgee or a specified custodian, the pledgee or custodian must retain physical delivery of that asset; provided that the asset is not re-delivered to the pledgor or to the purchaser, the security interest will not be released by a sale by the debtor.

Assets being subject to a perfected floating charge are released upon sale; depending on the provisions of the security document, the security over the asset may be replaced by security over a replacement asset or over the purchase price receivable.

A sale of mortgaged property or of assets being subject to a non-possessory pledge does not release the security, unless otherwise agreed by the parties. However, if the security asset is sold or otherwise transferred to a third party and at the time of enforcement the value of the asset proves higher than the maximum secured amount set for that security interest, the secured lender will only be entitled to recover, out of the enforcement proceeds, the lower of the amount due and unpaid under the secured obligation, or the maximum secured amount.

In respect of trade or other receivables being subject to security, the type of the security interest (security assignment or pledge) and the provisions of the security document will determine whether the sale is permitted and, if so, the consequences on the security interest.

As a matter of Greek banking practice, with the exception of a floating charge over inventory (which, by its nature, allows for a sale of the relevant security assets), facility documents and security documents include (in addition to negative pledge) contractual provisions that do not allow the security provider to sell or otherwise dispose of the security assets without the prior written consent of the lender.

Law stated - 21 April 2022

Non-fulfilment of guarantee obligations

What defences does a guarantor have against claims for non-fulfilment of guarantee obligations? Can such defences be waived?

A Greek law guarantee being subject to the general provisions of the Greek Civil Code on guarantees enables the guarantor to raise the objections and defences that would be expected for an accessory obligation, including without limitation defences concerning the legality, validity, binding effect and enforceability of the secured obligation of the primary debtor, a fault by the creditor (especially in case of undue release of other security, undue delay in pursuing the claim against the primary debtor or failure by the creditor to first enforce over the movable assets of the primary debtor). Express waivers can waive these defences in the guarantee agreement and this is normally the case for guarantees granted to secure bank loan facilities.

It is worth noting that, under a Greek law guarantee, a guarantor does not automatically have a right of recourse against the primary debtor where the guarantor is called to pay under the guarantee. Any such right of recourse must be based on a specific agreement between the guarantor and the primary debtor.

Law stated - 21 April 2022

Parallel debt requirements

Describe any parallel debt or similar requirements applicable in a secured bank loan financing where an agent acts for multiple investors.

A standard syndicated bank loan facility agreement will need to include parallel debt language. Bond loan financings do not need to include parallel debt language where a bondholders' agent is appointed. Where an intercreditor agreement is in place regulating several facilities or other financial indebtedness, parallel debt language will normally be necessary in respect of an intercreditor agent acting for the relevant multiple creditors.

Law stated - 21 April 2022

Enforcement

What are the most common methods of enforcing security interests? What are the limitations on enforcement?

Security over real property or movable tangible assets of any type is enforced by a sale of the assets by public auction subject to the supervision of the court, on the basis of an enforceable court judgment or court payment order or (where applicable) a mortgage deed or other security document benefiting from an exequatur.

These procedural requirements do not apply in respect of financial collateral validly created and perfected (and benefiting from the EU Financial Collateral Directive).

Security over trade receivables over bank accounts, insurance proceeds or trade receivables or other claims, if created in favour of a bank operating in Greece, would normally be enforced directly by the security holder, without the need for prior court proceedings against the security provider.

Law stated - 21 April 2022

Fraudulent conveyance and similar doctrines

Describe the impact of fraudulent conveyance, financial assistance, thin capitalisation, corporate benefit and similar doctrines on the structure of bank loan financings.

Fraudulent conveyance may enable a creditor to invalidate the conveyance, subject to successful court proceedings against the debtor to that effect, in accordance with the requirements of the Greek Civil Code. However, the criteria that need to be met for these purposes are strict and the relevant court proceedings may take time. Therefore, it is not market practice for creditors to initiate any such proceedings before insolvency; after declaration of bankruptcy, fraudulent conveyance may be challenged and result in rescission in accordance with the provisions of the Bankruptcy Code on vulnerable acts and transactions of the insolvent debtor.

As a matter of Greek law, financial assistance is the granting of a loan or guarantee or other security with a view to the acquisition by a third party of the company's own shares or of the shares of its direct or indirect parent. It is normally prohibited and may only be validly granted subject to prior compliance with the requirements of company law (Law 4548/2018, which (with effect from 1 January 2019) replaced Codified Law 2190/1920).

Thin capitalisation is not of itself an indication of insolvency; however, specific steps need to be taken by a company in case of thin capitalisation and failure to take such steps may expose the company to proceedings initiated by parties with a legitimate interest (including creditors) and may also expose a sole controlling shareholding to liability towards creditors. Bank loan or credit facility agreements usually include provisions intended to monitor capitalisation issues and mitigate relevant risks by appropriate covenants.

Corporate benefit is of critical importance where a guarantee, or other security or undertaking, is granted by a company in respect of third-party indebtedness, or in cases of upstream or cross-stream transactions. In the context of upstream or cross-stream arrangements or in case of financial assistance, corporate benefit must be substantiated under more stringent criteria, in accordance with the relevant requirements of Greek company law.

All the above must be diligently considered during the structuring phase of any financing that is likely to raise such issues, including without limitation acquisition financing, in order for the parties to be able to decide in a timely fashion what security or other comfort can be validly granted and on what terms.

Law stated - 21 April 2022

INTERCREDITOR MATTERS

Payment and lien subordination arrangements

What types of payment or lien subordination arrangements, or both, are common where the debtor has obligations owing to more than one class of creditors?

As a matter of Greek banking practice, subordination arrangements have often been used where mezzanine or other junior lenders (including shareholders) participate in the financing. Subordination arrangements are of a contractual nature and their content depends on the arrangements between the parties.

As a matter of Greek law, any such arrangements are in principle legal, valid, binding and enforceable on the same criteria that would apply to the legality, validity, binding effect and enforceability of a commercial agreement. Insolvency is relevant to the extent subordination by a lender could be held to constitute deprivation of the rights of that subordinated lender, unduly agreed by or imposed on that lender during a suspect period applicable to it.

Law stated - 21 April 2022

Creditor groups

What creditor groups are typically included as parties to the intercreditor agreement? Are all creditor groups treated the same under the intercreditor agreement?

The debtor, any guarantor or other security provider, the senior lenders, any mezzanine lenders, any junior lenders and any other junior creditors (such as shareholders under other commercial transactions with the debtor) are typically included as parties to the intercreditor agreement.

The way in which voting rights will be exercised (including any non-voting parties for all matters or for certain matters or in certain circumstances) and any requirements for the consent or approval or prior action of another creditor class can be among the matters regulated by the intercreditor agreement.

Intercreditor arrangements concluded under the Bankruptcy Code (whether before or after bankruptcy) or under other applicable insolvency legislation are subject to special requirements set by the applicable insolvency provisions, including a requirement for equal treatment of the creditors belonging in the same class (unless non-equal treatment is expressly agreed by the creditors that would otherwise benefit from equal treatment).

Law stated - 21 April 2022

Rights of junior creditors

Are junior creditors typically stayed from enforcing remedies until senior creditors have been repaid? What enforcement rights do junior creditors have prior to the repayment of senior debt?

Junior creditors typically agree to be satisfied after satisfaction of the senior lenders and to only initiate enforcement after or subject to commencement of enforcement by the senior lenders, or with the senior lenders' prior consent.

Law stated - 21 April 2022

What rights do junior creditors have during a bankruptcy or insolvency proceeding involving the debtor?

An intercreditor agreement concluded before bankruptcy or insolvency proceedings under the Bankruptcy Code or other applicable insolvency legislation is binding on the parties to that agreement. The debtor would normally be expected to also be a party to that agreement.

Intercreditor agreements concluded under the Bankruptcy Code or other applicable insolvency legislation are subject to the applicable provisions of the law in connection with the rights of junior lenders.

Law stated - 21 April 2022

Pari passu creditors

How do the terms of the intercreditor arrangement change if creditor groups will be secured on a pari passu basis?

An intercreditor agreement normally includes specific provisions on the way in which collection proceeds or enforcement proceeds will be distributed by the parties. It is strongly advisable to ensure that the debtor will be a party to any arrangement concerning the sharing of proceedings, in order for the group of creditors to ensure that the debtor will not be able to challenge that sharing on the basis of the allocation provisions included in each separate loan agreement.

Law stated - 21 April 2022

LOAN DOCUMENT TERMS

Standard forms and documentation

What forms or standardised terms are commonly used to prepare the bank loan documentation?

As a matter of Greek banking practice, there is no standardised Greek documentation similar to the Loan Market Association's or Loan Syndications & Trading Association's templates. However, both lenders and large corporate borrowers are familiar with these templates and understand them as an indication of good international practice, also followed in big-ticket domestic transactions.

Law stated - 21 April 2022

Pricing and interest rate structures

What are the customary pricing or interest rate structures for bank loans? Do the pricing or interest rate structures change if the bank loan is denominated in a currency other than the domestic currency?

Fixed and floating interest rates are commonly used in bank loan financings in the Greek market and, in case of a multi-currency loan or a loan convertible to another currency the documentation provides for the appropriate fixed or floating interest rate.

Law stated - 21 April 2022

Have any procedures been adopted in bank loan documentation in your jurisdiction to replace LIBOR as a benchmark interest rate for loans?

As a matter of Greek banking practice, in view that Greece is a Eurozone member state, EURIBOR is the most common base rate for bank loans. The use of LIBOR has been very uncommon in the Greek market, with the only exception being a very limited number of financing transactions involving UK or US lenders as majority lenders.

Law stated - 21 April 2022

Other loan yield determinants

What other bank loan yield determinants are commonly used?

Pricing floors are common in most recent bank loan financings, in order to protect the lenders against a negative base rate.

Law stated - 21 April 2022

Yield protection provisions

Describe any yield protection provisions typically included in the bank loan documentation.

Increased cost provisions used in bank loan documentation for substantial amounts are the standard increased cost provisions used in the international market.

Margin step-up mechanisms may also apply, by reference to specified financial ratios or the occurrence of an event of default other than a payment default, intended to compensate for increased credit risks of the lenders in connection with the borrower.

Prepayment premiums are normally limited to breakage costs in case of prepayments made before the end of an interest period (in respect of floating rate loans) or before the expiry of the loan (in respect of fixed rate loans). As a matter of Greek law, prepayment fees beyond breakage costs are normally problematic (with the exception perhaps of long-term loans prepaid before the expiry of a reasonable period agreed in the loan agreement).

Law stated - 21 April 2022

Accordion provisions and side-car financings

Do bank loan agreements typically allow additional debt that is secured on a pari passu basis with the senior secured bank loans?

Bank loan agreements may either prohibit additional secured financing without the prior written consent of the lenders or may allow it on condition of pari passu security and/or subject to compliance by the borrower with specified financial ratios and covenants.

Law stated - 21 April 2022

Financial maintenance covenants

What types of financial maintenance covenants are commonly included in bank loan documentation, and how are such covenants calculated?

As a matter of Greek banking practice, bank loan financings for large or medium corporates include provisions on leverage tests, security coverage tests and other financial covenants, and also include provisions on the monitoring of compliance with the above (usually through compliance certificates provided by the debtor and reviewed by its auditors and setting out the relevant calculations).

Formulation of the financial covenants (including with respect to the items that are taken into account or may be excluded) is set out in the bank loan agreement, which may also provide for the way in which any breaches may be remedied. Prepayments, additional security or capital contributions (whether expressly contemplated in the documentation or not) may be appropriate to remedy a breach of financial covenants.

Law stated - 21 April 2022

Other covenants

Describe any other covenants restricting the operation of the debtor's business commonly included in the bank loan documentation.

As a matter of Greek banking practice, depending on the nature of the debtor's business, the purpose of the financing and specific risks that are relevant to the debtor's business, bank loan documentation includes those provisions that are considered necessary by the lenders in order to restrict and monitor the debtor's business as appropriate on the basis of the lenders' credit committee approvals.

Law stated - 21 April 2022

Mandatory prepayment

What types of events typically trigger mandatory prepayment requirements? May the debtor reinvest asset sale or casualty event proceeds in its business in lieu of prepaying the bank loans? Describe other common exceptions to the mandatory prepayment requirements.

As a matter of Greek banking practice, change of control, illegality, excess cash flow and disposals of specified material assets commonly trigger mandatory prepayment by the debtor.

The loan documentation will also specify whether each such prepayment will benefit all creditors pro rata or one or more specifically affected creditors and whether any mitigation applies and in what circumstances.

Law stated - 21 April 2022

Debtor's indemnification and expense reimbursement

Describe generally the debtor's indemnification and expense reimbursement obligations, referencing any common exceptions to these obligations.

In addition to any fees payable to the agent and the arrangers and lenders, the debtor is normally expected to bear the costs for the negotiation and signing of the loan documentation, perfection of security documents, the costs for amendments and waivers, the costs in connection with the protection and maintenance of security interests and the costs of enforcement.

Bank loan agreements include specific provisions on costs and expenses that are borne by the debtor. Standard exceptions concern any costs exceeding a specifically agreed expense cap (where applicable) or costs 'not reasonably incurred' or costs requiring the prior approval of the debtor.

Law stated - 21 April 2022

UPDATE AND TRENDS

Key developments

Are there any current developments or emerging trends that should be noted?

Law stated - 21 April 2022

Jurisdictions

Bahamas	Higgs & Johnson Counsel & Attorneys at Law
Belgium	NautaDutilh
Canada	Stikeman Elliott LLP
Cayman Islands	Appleby
Cyprus	Antoniou McCollum & Co LLC
Finland	Waselius & Wist
Greece	Bernitsas Law
Japan	Mori Hamada & Matsumoto
Luxembourg	Vandenbulke
Malta	GVZH Advocates
Poland	DLA Piper
Spain	Cases & Lacambra
Switzerland	Lenz & Staehelin
Turkey	Turunç
USA	Shearman & Sterling LLP