
THE REAL ESTATE LAW REVIEW

FIFTH EDITION

EDITOR
JOHN NEVIN

LAW BUSINESS RESEARCH

THE REAL ESTATE LAW REVIEW

The Real Estate Law Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Real Estate Law Review - Edition 5
(published in February 2016 – editor John Nevin)

For further information please email
Nick.Barette@lbresearch.com

THE REAL ESTATE LAW REVIEW

Fifth Edition

Editor
JOHN NEVIN

LAW BUSINESS RESEARCH LTD

PUBLISHER
Gideon Robertson

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Thomas Lee, Felicity Bown, Joel Woods

ACCOUNT MANAGER
Jessica Parsons

MARKETING COORDINATOR
Rebecca Mogridge

EDITORIAL ASSISTANT
Sophie Arkell

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Robbie Kelly

SUBEDITOR
Gina Mete

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2016 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients.

Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of February 2016, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-909830-85-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INTERNATIONAL INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

THE SECURITIES LITIGATION REVIEW

THE LENDING AND SECURED FINANCE REVIEW

THE INTERNATIONAL TRADE LAW REVIEW

THE SPORTS LAW REVIEW

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

AL TAMIMI & COMPANY

ASBZ ADVOGADOS

BALCIOĞLU SELÇUK AKMAN KEKİ

BONELLI EREDE PAPPALARDO

BUN & ASSOCIATES

CAREY OLSEN

CMS REICH-ROHRWIG HAINZ

DE BRAUW BLACKSTONE WESTBROEK NV

DELOITTE ADVOKATFIRMA AS

DENTONS

DE PARDIEU BROCAS MAFFEI

G ELIAS & CO

HENGELER MUELLER

HERBERT SMITH FREEHILLS LLP

IGLESIAS, POZAS Y PÁEZ

LEE AND LI, ATTORNEYS-AT-LAW

LENZ & STAEHELIN

LETT LAW FIRM

LIEDEKERKE WOLTERS WAELEBROECK KIRKPATRICK

MAPLES AND CALDER

M & P BERNITSAS LAW OFFICES

NISHIMURA & ASAHI

ODVJETNIČKO DRUŠTVO BARDEK, LISAC, MUŠEC, SKOKO D.O.O.

IN COOPERATION WITH CMS REICH-ROHRWIG HAINZ

PAPADOPOULOS, LYCOURGOS & CO LLC

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

PETRIKIĆ & PARTNERI AOD IN COOPERATION WITH

CMS REICH-ROHRWIG HAINZ

SHIN & KIM

SLAUGHTER AND MAY

SOŁTYSIŃSKI KAWECKI & SZŁĘZAK

TSMP LAW CORPORATION

URÍA MENÉNDEZ

VIEIRA DE ALMEIDA & ASSOCIADOS, RL

WOLF THEISS ATTORNEYS AT LAW

ZÁRECKÝ ZEMAN

CONTENTS

Editor's Prefacevii
	<i>John Nevin</i>
Chapter 1	AUSTRIA 1
	<i>Peter Oberlechner</i>
Chapter 2	BELGIUM..... 14
	<i>Yves Delacroix and Alexandre Emond</i>
Chapter 3	BOSNIA & HERZEGOVINA..... 28
	<i>Muamer Suljić and Ana Terzić</i>
Chapter 4	BRAZIL 38
	<i>Marcelo José Lomba Valença and Tamiris Micheletti Britzki</i>
Chapter 5	CAMBODIA 49
	<i>Sophealeak Ing</i>
Chapter 6	CAYMAN ISLANDS..... 61
	<i>George Loutas</i>
Chapter 7	CHINA..... 70
	<i>Alex Wang and Edward Hsu</i>
Chapter 8	CROATIA..... 83
	<i>Ana-Marija Skoko</i>
Chapter 9	CYPRUS 95
	<i>Nicolas Th Papaconstantinou</i>

Chapter 10	DENMARK.....	108
	<i>Torben Mauritzen</i>	
Chapter 11	ENGLAND & WALES	120
	<i>John Nevin</i>	
Chapter 12	FRANCE	135
	<i>Pierre Gebarowski and Guillaume Rossignol</i>	
Chapter 13	GERMANY	150
	<i>Ingo Klöcker</i>	
Chapter 14	GREECE	161
	<i>Nikos A Voubiounis and Christina C Zakopoulou</i>	
Chapter 15	INDONESIA.....	174
	<i>Luky I Walalangi, Miriam Andreta, Fiesta Victoria and T Anggra Syah Reza</i>	
Chapter 16	ITALY	185
	<i>Alessandro Balp</i>	
Chapter 17	JAPAN	197
	<i>Norio Maeda, Naoko Katakami, Yasuo Asami and Toshiyuki Yamamoto</i>	
Chapter 18	JERSEY	211
	<i>Christopher Philpott and Will Whitehead</i>	
Chapter 19	KOREA.....	223
	<i>Kyung Don Lee, Robert C Young and Thak-Hwan Kim</i>	
Chapter 20	MEXICO	242
	<i>Enrique Iglesias Elizondo, José G Pozas de la Vega and David Páez Gonzalez</i>	

Chapter 21	MONTENEGRO..... 252 <i>Mihajlo Matković</i>
Chapter 22	NETHERLANDS 262 <i>Annemieke Wessels, Maarten Tinnemans and Max van Drunen</i>
Chapter 23	NIGERIA..... 274 <i>Gbolahan Elias, Lynda Chinweokwu and Pelumi Asiwaju</i>
Chapter 24	NORWAY 282 <i>Thorvald Nyquist</i>
Chapter 25	POLAND 293 <i>Janusz Siekański and Radosław Waszkiewicz</i>
Chapter 26	PORTUGAL..... 304 <i>Pedro Ferreirinha</i>
Chapter 27	QATAR..... 316 <i>Seem Maleh</i>
Chapter 28	RUSSIA..... 329 <i>Sergey Kolobov and Margarita Slavina</i>
Chapter 29	SERBIA..... 340 <i>Marija Marošan and Đorđe Popović</i>
Chapter 30	SINGAPORE 349 <i>Jennifer Chia, Priscilla Lim and Alicea Tan</i>
Chapter 31	SLOVAKIA 367 <i>Tomáš Zárecký and Laura Ogurčáková</i>
Chapter 32	SLOVENIA..... 383 <i>Uroš Bogša, Mojca Fakin and Saša Sodja</i>

Chapter 33	SPAIN.....	393
	<i>Diego Armero and Rodrigo Peruyero</i>	
Chapter 34	SWITZERLAND	404
	<i>Cécile Berger Meyer and Andreas Rötheli</i>	
Chapter 35	TAIWAN	416
	<i>Yi-Jiun Su and Yi-Li Kuo</i>	
Chapter 36	TURKEY	428
	<i>Barlas Balçioğlu and Ali Can Gören</i>	
Chapter 37	UNITED ARAB EMIRATES.....	439
	<i>Ibrahim Elsadig and Joe Carroll</i>	
Chapter 38	UNITED STATES	451
	<i>Meredith J Kane</i>	
Appendix 1	ABOUT THE AUTHORS.....	467
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS ..	487

EDITOR'S PREFACE

I am honoured to have been invited to take over from David Waterfield as editor of *The Real Estate Law Review* and I would like to take this opportunity to personally thank David for his invaluable help and support over the years and, on behalf of *The Real Estate Law Review*, for his vital role in its success since the first edition back in 2012.

Building on the success of the previous editions of the *Review*, the fifth edition now extends to some 38 jurisdictions, and we are delighted to welcome new contributors from important jurisdictions around the world. Each contributor is a distinguished legal practitioner in his or her jurisdiction with an in-depth understanding of both his or her own domestic market and the wider global real estate market. Each chapter offers an essential guide to real estate practice in the relevant jurisdiction together with an invaluable focus on market activity, important legal and practical developments over the preceding 12 months and the outlook for 2016. Together, the chapters offer real estate practitioners and their clients an immediate and accessible overview of international real estate.

Real estate is a truly global industry and it is no longer possible to look at domestic markets in isolation. It has become essential to develop an understanding of the needs and expectations of overseas investors, and of how domestic markets are affected by legal, economic, political and social events and trends throughout the world. International economic and political instability continue to have a significant effect on the international real estate market and this is reflected in investors' pursuit of value and security. The United Kingdom (and London in particular) continues to be seen as a safe haven for capital from around the world, and the outlook here remains buoyant in both the commercial and residential sectors.

I wish to express my gratitude to all the distinguished practitioners from across the globe who have contributed to this fifth edition, and thereby to the continued

success of *The Real Estate Law Review*. I would also like to take this opportunity to thank Gideon Robertson and his team for their sterling efforts in coordinating the contributions and compiling this edition.

John Nevin

Slaughter and May

London

February 2016

Chapter 14

GREECE

*Nikos A Vouhiounis and Christina C Zakopoulou*¹

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

The general principles of Greek property law can be found in Chapter 3 of the Greek Civil Code (CC), Articles 947–1345. Specific matters relating to real property are dealt with in other parts of the CC, the Greek Code of Civil Procedure and other pieces of legislation.

Real property rights include the right to ownership (Article 999 CC), which can be further distinguished into full ownership, bare ownership and usufruct; easement rights (Article 1118 CC); and the right to mortgage (Article 1257 CC), as follows:

- a* full ownership constitutes a universal real right. It may be absolute (100 per cent ownership) or joint (*ab indiviso* ownership);
- b* bare ownership is a limited real right and constitutes part of full ownership; the bare owner lacks the advantages of usufruct, which means he or she cannot use or exploit the property until the death or resignation of the usufructuary, in which case usufruct is unified with bare ownership and the bare owner becomes the full owner of the property;
- c* usufruct is a personal servitude and constitutes also part of full ownership. The usufructuary may use and exploit the property that belongs to the bare owner. However, the usufructuary must preserve the property intact (i.e., he or she cannot alter the property's shape, form, size, etc.), although he or she is not responsible for any deterioration or wear due to natural causes. Usufruct is established by means of a notarial deed;

¹ Nikos A Vouhiounis and Christina C Zakopoulou are associates at M & P Bernitsas Law Offices.

- d* easement rights constitute a limited real right (e.g., right of way) that is exercised by the owner of a property (dominant estate) and burdens a third-party property (subservient estate);
- e* the right to mortgage consists of a limited real right granted to a beneficiary, to secure a claim of the beneficiary against the owner of the property. In cases of enforcement of this right, the beneficiary is able to satisfy his or her claim from the proceeds of the auction of the burdened property. A mortgage is distinct from a pre-notation of mortgage, which can be turned into a mortgage subject to the suspensive condition of final adjudication of the secured claim to the creditor and the switch of the pre-notation into a mortgage.

Finally, in the context of Law 3986/2011 on Urgent Measures for the Implementation of the Mid-Term Fiscal Strategy Framework 2012–2015, the concept of ‘surface right’ was reintroduced into Greek Law, after almost a century. The right refers only to real property assets owned by the Greek state or public sector legal entities, and it is granted for an initial period of up to 99 years by way of a notarial deed, subject to payment of an agreed amount. The beneficiary of the surface right enjoys all rights of the owner of the asset and has the right to build, develop, exploit and manage the asset. Furthermore, the beneficiary of the surface right may grant security over the asset to third parties (e.g., in the context of financing). The beneficiary of the surface right is also under the obligation to maintain and protect the asset and return it to the owner at the end of the agreed surface right term.

ii Ways of acquiring ownership of real property in Greece

Ways of acquiring real property under Greek law include:

- a* acquisition of real estate by notarial deed (asset deal) (i.e., written notarial contract entered into between the owner and the buyer, which is executed before a notary public). Upon execution, the purchase deed should be forthwith registered with the competent land registry and cadastral office so that the new owner acquires valid title over the property. According to Articles 1033 and 1198 CC, the acquisition of ownership is not effected until registration of the notarial deed with the land registry and cadastral office is completed;
- b* acquisition of the shares of a special purpose vehicle (SPV) that holds ownership rights over real property (share deal) (i.e., private agreement for the sale and purchase of shares entered into between the seller and the buyer). No registration or filing with any public authority is required since owner of the real property remains the SPV, the shares of which are transferred;
- c* acquisition by virtue of succession, whether testate or intestate;
- d* acquisition by donation or by parental grant;
- e* acquisition by auction (i.e., by act of compulsory enforcement, brought against the debtor’s property, where the ownership of property is finally acquired by the highest bidder);

- f* acquisition by the person who has been in possession of the property for 20 years and exercises proprietary rights thereon (extraordinary usucaption); and
- g* acquisition by the person who, acting in good faith, has been in possession, with legal title, of a property for a decade (ordinary usucaption).

In the context of either an asset deal or a share deal, the seller provides representations and warranties to the buyer with respect to the non-existence of any actual or legal defects over the asset. In particular, such representations and warranties confirm, *inter alia*, the full and undisputable title over the asset, the absence of any liens or encumbrances and of any third-party claims, that there are no town-planning or environmental defects, that all necessary permits and licences have been duly issued and are still in force, and that there are no forestry or archaeological issues, etc. Additional representations and warranties may be given depending on the type of the asset and its particulars (e.g., location and permitted use). In certain transactions, any defects or deficiencies of the asset are disclosed by the seller and acknowledged by the buyer, in which case specific compensation clauses may be agreed and included in the contract.

iii System of registration

There are currently two different registration systems for real property in Greece (i.e., the land registry system and the cadastral system), which in some areas run in parallel.

A large number of land registries exist all over Greece, each covering a specific area. They actually cover every real property asset in the country and, in this respect, there is a competent land registry for every asset. The registration with the land registries is made by reference to the name of the owner. In some areas, two land registries may be competent, in parallel, for the same property. This is the case where a new land registry is established to cover a specific part of an area that was previously within the competence of a pre-existing land registry. In these cases, earlier ownership titles are registered with the pre-existing land registry, while titles of ownership acquired after the establishment of the new land registry must be registered with the latter.

In the course of the past 15 years, the procedure for the creation of the National Cadastre has been initiated and continues to date. Unfortunately, Greek public authority bureaucracy has caused considerable delays to the completion of this process. However, in the past five years, the procedure has been accelerated and the National Cadastre is expected to be completed in the next three to five years, following which cadastral offices will cover all real properties in Greece. Under the cadastral system, registration is made by reference to the details of the real property asset (and not of the owner, as is the case with the land registry), whereby each property is identified by a unique ID number.

In areas where both a land registry and a cadastral office operate, registration should take place in both. Both land registries and cadastres issue certificates regarding the registration of the ownership titles of a property, the existence of any encumbrances, third-party claims, etc.; however, such certificates are not guaranteed by the state and are not always 100 per cent accurate (at least in the case of land registries). In the absence of an electronic database for real estate assets, and especially with regard to data kept by the land registries, it is advisable to carry out an on-site title search, particularly with the

competent land registry, prior to acquiring real property. Such a search aims to confirm the undisrupted succession of ownership of the asset for at least 20 years and also that no encumbrances, third-party claims, easement rights, expropriations, etc. exist.

Overall, note should be taken of the importance of registration of the notarial deed, pursuant to which the transfer of a real estate asset is effected, as under Greek law, Articles 1033 and 1198 CC, the transfer of ownership is completed only upon registration of the notarial deed. The same rule also applies to other kinds of notarial deeds or instruments by means of which a real right is conferred, such as notarial deeds or court decisions for the creation of a security over a real property asset, the creation of easements or of horizontal properties, etc. Such notarial deeds and instruments are described in Article 1192 CC.

iv Choice of law

According to the rules of international private law, as incorporated in the CC (Article 4 et seq. CC), the principle of *lex rei sitae* applies to real property assets located in Greece (Article 27 CC). The same rule also applies with regard to the type of contract that is necessary for the valid creation, modification, conveyance or amendment of real rights over real property assets located in Greece (Article 12 CC).

II OVERVIEW OF REAL ESTATE ACTIVITY

Between 2000 and 2009, the Greek real estate market was booming, attracting institutional investors from Europe, the United States and even from Australia and China, who were investing in not only commercial complexes and office space buildings, but also in touristic projects and logistic centres. The outbreak of the financial crisis, first in the United States in 2007 and 2008 and then in Europe, caused a considerable downturn in the market as it created concerns among international investors and many liquidated their real estate investments not only in Greece but in Europe in general.

However, the outbreak of the deep financial crisis in Greece as of 2009 suspended any kind of interest from international investors in making new investments in the Greek real estate market; as a result, no transactions took place until at least 2013. Foreign investors took seriously the risk of a ‘Grexit’ and the possibility of Greek state bankruptcy and subsequently lost all interest in the Greek market.

Even in 2013 and 2014, when the first signs of revival appeared in the Greek economy and trust began to be gradually restored, international investors were quite reluctant to invest, although starting to express interest, at least on a theoretical level.

The establishment of the Hellenic Republic Asset Development Fund (HRADF) by the Greek state, pursuant to Law 3986/2011 on Urgent Measures for the Implementation of the Mid-Term Fiscal Strategy Framework 2012–2015, and the initiation by the HRADF in 2012 onwards of international privatisation tenders for several public assets (including the former Hellinikon Airport area in Athens, Astir Palace Resort in Vouliagmeni, the Kassiopi area in Corfu, the Paliouri area in Chalkidiki, etc.), gave a positive sign to international investors and raised interest. However, although the significant drop in prices of real estate during the first three to four years of the financial crisis was a positive factor for investors, because of the depth of the crisis, investors

continued to consider the market as overpriced and waited for further price reductions. This resulted in only limited interest in the HRADF international tenders and also led to the submission of low financial offers.

The emergence of the political crisis near the end of 2014 and during the first half of 2015 – which led to a serious crisis in the relations between the Greek government, the rest of the EU Member States and the International Monetary Fund (IMF) and made the possibility of a Grexit more likely than ever – froze again the market and completely discouraged potential investors.

Nevertheless, there have been identifiable signs of recovery in the real estate market during the final quarter of 2015 and it is to be hoped that this recovery will continue and foreign investors will become more actively involved.

III FOREIGN INVESTMENT

i Fast Track Law 3894/2010

Law 3894/2010 on Acceleration and Transparency of Implementation of Strategic Investments (the Law) was enacted with a view to addressing foreign investors' concerns that Greek state bureaucracy in respect of licensing, planning, zoning, etc. delays the implementation and operation of any kind of investments, including real estate.

The Law applies to strategic investments, defined therein as productive investments implemented by the private or public sector and generating quantitative and qualitative results of major significance for the entire Greek economy. Such investments may relate to various sectors (i.e., industry, energy, tourism, transport, communications, the health sector, waste management and cutting-edge technology). For an investment to benefit from the Law, various factors are taken into consideration, such as the total investment cost or, irrespective of cost, the creation of at least 150 employment positions, the investment's viability, the investor's creditworthiness, the increase in export activity and development on a local level.

Investments captured by the Law enjoy a number of benefits including (1) special deviations from the restrictions deriving from applicable legislation, (2) strict time frames for licensing, approvals, etc., and (3) tax benefits.

In this respect, a state-owned entity has been established, namely Enterprise Greece Invest and Trade SA, operating as a one-stop shop for the licensing and authorisation of investments captured by the Law. This entity also provides information to interested investors on the institutional, legal, tax and financial framework governing investments in Greece. The entity's site – www.enterprisegreece.gov.gr – includes comprehensive information for potential investors in various languages.

ii Foreign ownership limitations applying to real property assets located in border areas

In respect of real property assets located in specific areas characterised by law as 'border areas', Law 1892/1990 on Reforms and Development restricts the acquisition of contractual rights or rights *in rem* (e.g., acquisition of ownership or granting of use by way of a lease agreement) (Article 25). In particular, the acquisition of such rights is subject to the prior written approval of a special administrative committee. The

committee consists of representatives from the Ministries of National Defence, Finance, Regional Development and Competitiveness, Maritime Affairs, Islands and Fisheries, and the Ministry of Citizen Protection.

This restriction applies if the relevant right is created in favour of individuals who are citizens of a non-EU state or of a country outside the European Free Trade Association (EFTA), or legal entities having their registered seat in a non-EU state or outside the EFTA.

Areas classified by Law 1892/1990 as border areas include a number of islands located in the Aegean Sea, as well as areas next to the mainland borders of Greece with Turkey, Bulgaria, the Former Yugoslav Republic of Macedonia, and Albania.

IV STRUCTURING THE INVESTMENT

i Main types of investment structure

There are two main types of investment structure to be considered in the case of investment in Greek real property by EU or overseas investors: the direct acquisition of the asset (asset deal structure), under which the non-Greek individual or legal entity proceeds directly to the purchase and acquisition of the real property asset; or the indirect acquisition of the asset (share deal structure), under which the non-Greek individual or legal entity proceeds indirectly to the purchase and acquisition of the real property asset through the establishment of a legal entity in Greece.

The main issues that impact on the decision for the deal structure are:

- a* the applicable special property tax: the investor, under any type of investment structure (asset or share deal), should take into consideration the provisions on the annual special property tax (see Section V, *infra*) and the conditions for exemption therefrom;
- b* income taxation and exit strategy: investors usually opt for a share deal; it has proven expedient for the Greek legal entity acquiring the asset not to be directly held by the investor. A holding company or even a series of non-Greek entities may be set up by the investor to deal with, *inter alia*, the investment, financing and holding of different sets of assets as well to implement the investor's overall strategy. Investing in real estate in Greece through a legal entity or entities established in another EU jurisdiction may support a zero per cent dividend withholding in Greece (subject to the conditions set by law) and potentially facilitate future changes in the shareholding structure or the exit from the investment. In this respect, the applicable law finally chosen should, either through local legislation or by virtue of bilateral agreements executed with the country of the investor's establishment, provide for better terms than those included in the relevant double taxation treaty executed between Greece and the country of the investor's establishment; and
- c* financing of the investment: Greek income tax law, as in force to date, provides for specific rules on interest tax deductibility and thin capitalisation that should be taken into consideration. Withholding tax obligations on interest paid to a non-Greek lender should also be examined according to domestic, EU and double taxation treaty provisions.

ii Real estate investment companies (REICs)

REICs are special purpose companies that invest in real estate and manage income deriving from real property assets. REICs are mainly governed by the provisions of Law 2778/1999 on Real Estate Mutual Funds – Real Estate Investment Companies and other provisions, as in force. Their minimum share capital amounts to €25 million, an amount that can be revised by the Hellenic Capital Market Commission, and it is required that they distribute at least 50 per cent of their profits to their shareholders. Also, it is mandatory that a REIC is listed on the Athens Stock Exchange two years after its incorporation and its shares need to be registered.

Any change to the articles of association of a REIC or any share capital increase must be approved by the Hellenic Capital Market Commission. REICs benefit from a favourable tax framework, including exemptions from property transfer tax, capital gains tax on the sale of property, tax on dividends, etc.

Furthermore, REICs' assets are valued by an external auditor every six months, with an asset valuation required prior to the purchase or sale of any property. Any property acquired by a REIC must be held for a period of at least one year before its resale is permitted and at least 80 per cent of a REIC's capital must be invested in real property assets. The remaining 20 per cent can be invested either in stocks, deposits or other market instruments according to Article 22 of Law 2778/1999, as in force. Lastly, a REIC is allowed to borrow an amount of up to 75 per cent of its assets' value from a credit institution.

V REAL ESTATE OWNERSHIP

i Planning

Major urban planning reforms in the real estate legislation have been enacted lately in an effort to attract investments. The main change was introduced by Law 4269/2014 on Urban and Town Plan Reform, according to which spatial planning has been divided into three main levels – national, regional and local – and into two different main types – strategic and regulatory – while various authorities have been entrusted with the implementation of this scheme. Moreover, Law 4269/2014 aims to liberalise land-use restrictions and impose general rules that will make it easier to integrate commercial, recreational and other facilities within residential areas, contrary to the provisions of the previous over-restrictive and outdated legislation. Again, specific restrictions may apply depending on the circumstances (urban plan, type of building, proximity of archaeological sites, etc.). In general, a property's building coefficient depends on its location and whether it is located within or outside the town plan (which largely coincides with the classification of a property as urban or rural). In the latter case, the landowner must own a plot of at least 4,000 square metres to develop the property. In the former case (i.e., in most urban areas), the building coefficient, is set from 0.8 to 1.2, except for sites that are considered as touristic where the coefficient is 0.6. Other restrictions on real estate development may derive from land or urban plans, environmental protection issues, archaeological restrictions or sector-specific activities, etc.

ii Environment

The Greek Constitution provides that the protection of the natural and cultural environment is a duty of the state (Article 24, Paragraph 1). For this purpose, special preventive or repressive measures in the context of the 'principle of sustainable development' need to be adopted. In addition, relevant EU directives on environmental protection have been incorporated into Greek law. In particular, Law 4014/2011 on Environmental Licensing of Projects and Activities provides for environmental licences of a special status for specific projects and activities, including, *inter alia*, any construction and operation that may have an impact on the environment.

In cases of breach of the relevant legislation, fines are imposed by the competent administrative authorities, while criminal charges may also be brought against the offender, be it a natural person or a legal entity. In the case of legal entities, the criminal charges are brought against the directors and officers of the legal entity concerned.

It is important to note that, as from 2011, the issuance of Energy Performance Certificates for residential buildings (primary or secondary), commercial stores, offices, hotels, warehouses, etc. is required, subject to statutory exceptions (see Laws 3661/2008, 3851/2010 and 3889/2010). The issuance of such certificates is mandatory for all buildings prior to being leased or transferred.

Finally, because of Greece's geographical characteristics, special legislation has been adopted for the protection of the seashore and the beach, in particular Law 2971/2001 on the Seashore and the Beach, as in force following its amendment by Law 4321/2015 on Restarting the Greek Economy, which provides that the seashore and the beach are considered to be public-use areas belonging to the state, with the state being responsible for their protection and management. Unimpeded access of the public thereto must be preserved at all times. However, such access may be restricted by way of a special duty or fair, in the case of organised beach facilities, touristic developments, etc.

Also, it is expressly provided that the construction of buildings and other facilities on the seashore and the beach is not allowed, except for uses related to public interest, environmental and cultural purposes, and for recreational activities.

The same law provides that ownership rights claimed by individuals in areas designated as part of the seashore are necessarily expropriated in favour of the state and all kinds of building constructed or erected thereon, after completion of the expropriation, should be demolished.

iii Tax

Income tax on Greek legal entities

Greek legal entities keeping double-entry accounting books are annually subject to corporate tax at the flat rate of 29 per cent on their taxable income.

According to interpretative guidelines issued recently by the Greek Ministry of Finance, non-Greek entities holding real estate in Greece should keep double-entry accounting books, unless subject to specific exemptions.

The calculation of taxable income is made by reference to the income gained from all sources and the expenses incurred for its acquisition. Income from real estate is treated as business income. Expenses incurred for the acquisition of the income above are tax deductible, subject to specific restrictions.

The distribution of dividends is subject to 10 per cent withholding income tax. Specific rules provide for certain exemptions to dividend withholding.

Income tax on individuals

Income from real estate (e.g., rental income, income from own use and from the concession of use) earned by individuals is subject to income tax according to an income or tax rates scale, which provides that income up to €12,000 is subject to tax at the rate of 11 per cent while income exceeding €12,000 is subject to tax at the rate of 33 per cent. The law provides for the tax deductibility of specific expenses incurred. The Greek government has an obligation, under the August 2015 package of austerity measures, to increase the above rates to 15 per cent and 35 per cent respectively.

Real estate transfer tax

Real estate transfer tax, at 3 per cent, is due on the transfer of real estate property situated in Greece. The tax due is calculated on the higher of either the sales price stated in the contract or the deemed value of the property, calculated according to the formula provided by the Ministry of Finance. Municipal levies, at the rate of 3 per cent, are calculated on the amount of the real estate transfer tax due. The law provides that the above 3 per cent tax rate may be reduced or transfer tax may not even be due upon fulfilment of specific conditions (e.g., division of real estate property held *ab indiviso* or acquisition of family housing).

VAT at 23 per cent (standard rate), instead of 3 per cent transfer tax, is due on the transfer of new buildings, whose building permit is issued or renewed (and construction works have not started) after 1 January 2006. Any building that has not been used (i.e., has not been leased or used by the enterprise for its own services, etc.) is considered as new. If the complete file for construction works was submitted to the City Plan Agency and a preliminary agreement and a contractor's agreement were signed before 25 November 2005, VAT exemption may be granted, following a specific request to the tax authorities.

Capital gains tax

The Income Tax Law (Law 4172/2013) provides that, at the year end, legal entities are subject to tax at the rate of 29 per cent on capital gain deriving from the sale of real property assets and on all other income gained by the entity (for entities keeping double-entry books).

Individuals (who do not act as entrepreneurs) deriving capital gain from the sale of real property assets are exempted from taxation until 31 December 2016. The application of the provisions of Article 41 of the Income Tax Law, ruling on the taxation of capital gains at 15 per cent, is postponed until 1 January 2017.

Taxes on holding real estate property rights in Greece

Unified Real Estate Tax (URET)

URET is imposed as of 2014 and for each subsequent year on any real property asset located in Greece and owned by natural persons or legal entities on 1 January of each year. Any person or entity holding a right over real property is subject to this tax.

URET is equal to the amount of the main tax calculated on each property (buildings and plots of land) and the additional tax calculated on the total value of the rights existing over such real property. The main tax for the rights on buildings ranges between €2.50 and €16.25 per square metre. The main tax for the rights on plots of land ranges between €0.003 and €9 per square metre. The additional tax is imposed on the total value of rights over a legal person's real property, and ranges between 0.5 per cent and 2.5 per cent. For individuals, the range is set between 0.1 per cent and 1 per cent and applies to real estate property exceeding the value of €300,000.

Special Property Tax

The Special Property Tax is imposed on entities that have full ownership, bare ownership or usufruct rights on real property assets located in Greece. It is calculated at 15 per cent of the deemed value of the property. It is imposed on any property located in Greece for relevant ownership rights owned on 1 January of each year, regardless of any changes in these rights during that year. The law provides for an exhaustive list of exemptions from the above rule.

Local real estate duty

Local real estate duty is imposed on every real property asset that is included in the city plan and on buildings that are not included in the city plan. The duty ranges between 0.025 per cent and 0.035 per cent of the deemed value of the property and is levied by the Public Power Corporation or any alternative supplier of power.

iv Finance and security

Financing in real estate projects in Greece usually takes the form of a loan granted to the purchaser by a financial institution. As a matter of standard Greek banking practice, real estate financing requires security over real property, insurance proceeds, bank accounts and rentals and other receivables relating to the property, whether of first ranking or of acceptable subsequent ranking.

As far as the real property itself is concerned, the lenders will need a due diligence report on ownership without reservations or, alternatively, identification of any existing encumbrances or third-party claims and any other matters that could create illegality or unenforceability issues in connection with the property and its further exploitation. The legal due diligence report is normally supplemented by a technical due diligence report, on the basis of which planning or environmental issues, as well as any building or operating licences that may need to be obtained or could not be obtained, can be identified. If the due diligence report is subject to reservations, the lenders will expect the report to clearly identify any issues relating to the property in a manner that can assist them in assessing the risks and deciding whether these risks are acceptable and on what terms.

As an alternative, financing may be granted to a potential real estate investor in the form of a financial leasing agreement (Law 1665/1986 on Financial Leasing). Pursuant to the agreement, the leasing company acquires the real property asset from the vendor and leases the same to the investor, who is under the obligation to pay leasing rentals for an agreed period, while acquiring ownership over the asset upon full repayment of the leasing amount.

VI LEASES OF BUSINESS PREMISES

Commercial lease agreements are governed by Presidential Decree 34/1995 on Codification of Legislative Provisions Regulating Commercial Lease Agreements (the Lease Law), as amended and in force. In respect of all matters not explicitly governed by the Lease Law, the relevant provisions of the CC apply.

i Duration and early termination

As a general rule, commercial leases concluded prior to 28 February 2014 (when the provisions on leases were amended by Law 4242/2014) are valid for a 12-year term (even if concluded for a shorter period) or any agreed longer term of definite duration. Leases concluded after 28 February 2014 are valid for a three-year term, even if concluded for a shorter period or if they are of an indefinite duration.

The right of the lessee to terminate the lease agreement following the lapse of one year, by giving three month's prior written notice and paying one month's rent as compensation, is applicable as regards lease agreements concluded prior to the amendment introduced by Law 4242/2014. However, this right does not seem to apply in the case of 'new' leases (i.e. concluded after 28 February 2014), since there is no specific provision for early termination by the lessee and as yet there is no jurisprudence on this matter.

ii Rent and rent adjustments

Within the context of the lease agreement, the parties agree on a monthly rent and its readjustment. In view of the severe economic crisis in Greece during the past five years, as regards new lease agreements, the parties usually agree that there will be no increase for the first two to three years of the lease term. After that period, there is usually an agreement on an annual increase of the rent by reference to the annual consumer price index of the preceding lease year, plus 1 per cent or 2 per cent. Also, in the case of lease agreements that were concluded prior to the onset of the economic crisis and that include provisions on high rents and considerable annual increases, lessees have sought to amend such agreements either in agreement with the lessor or by pursuing a judicial decision for the decrease of the rent. Recent jurisprudence is favourable to lessees seeking rent reduction.

In any case, a lessee can seek before the court, under Articles 288 and 388 CC, the adjustment of the rent or the termination of the lease, subject to evidence that unforeseeable circumstances have occurred as a result of which the performance of the financial obligations under the lease agreement has become excessively onerous as compared with the obligations borne by the other party in consideration for such performance and in view of the current financial situation in Greece.

Finally, a stamp duty of 3.6 per cent is imposed on the lease payment. Alternatively, in the case of leasing of spaces in malls or commercial centres, the parties may submit the lease payments to VAT (and not stamp duty).

VII DEVELOPMENTS IN PRACTICE

i ESHADA

To facilitate investors, Law 3986/2011 provides for general town planning rules and sets out the general uses for which public properties may be developed, which include (1) tourism and leisure; (2) business parks, theme parks, shopping centres or malls; (3) logistic centres and warehouses; and (4) holiday or tourist villages.

To this effect, special plans for the development of any public asset (ESHADA) are prepared and approved (Article 12, Paragraph 1). The approval is effected by means of a presidential decree and includes: (1) the classification of the asset under one of the general categories of use described above, (2) the particular uses that are allowed, (3) the special building terms and conditions, and (4) the special protection zones that apply to the asset, if any.

Any master plans, General Urban Plans or Urban Control Zones specific to the area may be amended through this presidential decree. The decree may also amend terms of approved street plans and town plans or urban planning studies, and may set special terms for the use and the building conditions of assets located within an urban plan, even by deviation from the existing town planning terms and conditions. Recently, similar provisions were introduced for public assets located outside urban plans.

Law 3986/2011 further includes provisions that aim at accelerating the issuance of necessary building permits (Article 15). Finally, special provisions aim to grant investment owners a direct concession of the use of the seashore and the beach, in return for the payment of consideration, for a period of up to 50 years, which may be extended for another 49 years (Article 14).

ii Law 4277/2014 – New Urban Master Plan of Athens–Attica

The latest update of the Athens Urban Master Plan was enacted by Law 4277/2014 on New Urban Master Plan of Athens–Attica and other provisions, which was issued following extensive public consultation with all interested parties, including the competent regional, governmental and judicial authorities.

The implementation of the New Urban Master Plan has three targets: the socioeconomic reconstruction of the greater area of Athens; its spatial reorganisation; and the protection of the environment.

The main goals of the reform are, among others, to promote Athens as the principal Mediterranean capital and as a leading business centre, to strengthen the role of Athens as the gateway for tourists visiting Greece and to increase its citizens' standard of living. The measures intended to achieve these targets include investments in expanding the transportation network, the redevelopment of the coastal front, the exploitation of Olympic venues and the development and growth of new touristic products (medical, conference and cultural tourism, etc.) as well as dividing Attica into four separate regions.

Moreover, pursuant to Article 33, the semi-autonomous authority responsible for the implementation of the New Urban Master Plan (i.e., the Organisation for the Planning and Environmental Protection of Athens) has been abolished and its competence has been transferred to the Ministry of Environment and Energy, thus strengthening the central government's role in the implementation of the Athens master plan.

Lastly, the details of the new Master Plan are to be specified in the context of presidential decrees and joint ministerial decisions to be issued in the period to come, whereas its implementation is to be monitored by a new authority to be established pursuant to Article 37 of Law 4277/2014.

VIII OUTLOOK AND CONCLUSIONS

The last few months of 2015 saw an increasing interest from international investors in real estate projects in Greece, mainly of a touristic nature, with a number of international real estate funds and hedge funds having entered the market; by way of example, we mention the acquisition by hedge funds and private equity funds of a major stake in Sani Resort and Ikos Resorts in the Chalkidiki area. Also, real estate projects that have been dormant for quite some time, such as the Astir Palace Resort in Vouliagmeni, in the Athens Riviera, and the Afantou area in Rhodes, are back on track.

Critical factors for the strengthening of the interest of international investors in the Greek real estate market will be the reinforcement of political stability in Greece and compliance by the Greek state with its obligations arising from the third Memorandum of Understanding, entered into in August 2015, between the European Commission, the Greek government and the Bank of Greece (and the IMF).

Finally, we anticipate that the successful recapitalisation of Greek banks, which was completed in December 2015, the legislation recently enacted with respect to non-performing loans and the anticipated lifting of capital controls imposed in the summer of 2015 will further help restore confidence in the Greek economy and in Greek financial institutions and, ultimately, in the Greek real estate market.

Appendix 1

ABOUT THE AUTHORS

NIKOS A VOUHIOUNIS

M & P Bernitsas Law Offices

Nikos Vouhiounis obtained his LLM decree in commercial and corporate law from Queen Mary University of London in 1991 and in 1992 he became member of the Athens Bar Association. He joined M & P Bernitsas Law Offices in 1998. His expertise lies in real estate development, including residential, business and leisure projects. He has successfully advised institutional investors entering the Greek market on high-value real estate projects, including the development, acquisition and commercialisation of commercial malls, office-space buildings, secondary residential complexes and touristic facilities. Nikos has extensive knowledge of real estate privatisation tender procedures carried out by the Hellenic Republic, from the point of view of both the Greek state and participants in tenders. In this context, he has advised on real estate and town planning issues, participated in acquisition and disposal negotiations, drafted transaction documentation and advised on the commercialisation of land development projects, including drafting commercial lease, long-term lease, sale and leaseback and cooperation agreements for hotel and cinema operators, retailers and other businesses. Nikos's commercial law practice is focused on advising clients on their entry into commercial contracts and joint ventures and issues arising in the course of their business operations. He has also acted in numerous mergers and acquisitions.

CHRISTINA C ZAKOPOULOU

M & P Bernitsas Law Offices

Christina Zakopoulou obtained her law degree from the Aristotle University of Thessaloniki and an MSc from the graduate programme in Business Studies for Legal Practitioners from the Athens Laboratory of Business Administration (ALBA). She became a member of the Athens Bar Association in 1993. She joined M & P Bernitsas Law Offices in 2000 and has extensive experience in retail and commercial real estate and land development projects. She has been advising on real estate privatisation tenders and

the development of real estate assets by the Hellenic Republic Asset Development Fund (HRADF) since it was established in 2011, including drafting transaction documents. Christina also has extensive experience in acting in relation to public and private mergers and acquisitions, capital markets offerings on the Athens Stock Exchange, due diligence reviews and share capital increases. Christina undertakes company formation and structuring, ongoing corporate governance and advises on regulatory compliance. She also advises clients on their entry into all types of commercial agreements, in particular agency, distribution, lease, share sale and purchase and share contribution agreements.

M & P BERNITSAS LAW OFFICES

5 Lycavittou Street

GR-106 72 Athens

Greece

Tel: +30 210 361 5395

+30 210 339 2950

Fax: +30 210 364 0805

nvouhiounis@bernitsaslaw.com

czakopoulou@bernitsaslaw.com

www.bernitsaslaw.com