
THE REAL ESTATE LAW REVIEW

SIXTH EDITION

EDITOR
JOHN NEVIN

LAW BUSINESS RESEARCH

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The Real Estate Law Review
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Sixth Edition

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EDITOR'S PREFACE

Real estate is a truly global industry. The worldwide impact of events of the preceding 12 months has confirmed that it is no longer possible to look at domestic markets in isolation. It is hoped that *The Real Estate Law Review* reflects this position. An evolving awareness of the global real estate market and an understanding of the practices, requirements and concerns of overseas investors is essential if practitioners and their clients are to take full advantage of investment trends as they develop.

The *Review* seeks to provide an overview of the state of the global real estate market. The theme this year has been one of uncertainty. First we had Brexit, as the UK voted to leave the EU, and then the result of the US election. It is probably fair to say that neither was expected, and while the significance of Brexit diminishes in a global context, the same cannot be said of Donald Trump's victory. It will be very interesting to see how the global real estate market evolves over the coming months. While there will undoubtedly be risks, there will also be opportunities. Investors and their professional advisers will need to develop an appropriate strategy to ensure that risks are assessed and opportunities are taken. By and large, markets do not like uncertainty and some of the positive outlook reflected in last year's edition has undoubtedly diminished.

The continued success of the *Review* is a true testament to its validity in the global real estate market. The sixth edition covers 37 jurisdictions, and we are delighted to welcome new contributions from around the world. Each contributor is a distinguished practitioner in his or her own jurisdiction and has provided invaluable insight into the issues pertinent to that jurisdiction in a global context.

Once again, I wish to express my deep and sincere gratitude to all my distinguished colleagues who have contributed to this edition of the *Review*. I would also like to thank Gideon Robertson and his publishing team for coordinating the contributions and compiling the sixth edition.

John Nevin
Slaughter and May
London
February 2017

Chapter 14

GREECE

*Nikos A Vouhionis 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;
- 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);

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

- 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 the market again and completely discouraged potential investors.

Nevertheless, the political stability following the elections of September 2015 and the introduction of several reform measures by the Greek government during 2016 allowed some identifiable signs of recovery in the real estate market during this year and it is to be hoped that foreign investors will become more actively involved.

III FOREIGN INVESTMENT

i Development Law 4399/2016

The much anticipated new Development Law published in June 2016 aims to promote the balanced development with respect to natural and environmental resources, to establish and facilitate the use of new technologies, to improve the competitiveness in several business sectors and also to upgrade the services provided. Also, it aims to attract direct foreign investments and to ensure the positioning of Greece in the international division of labour.

In order to achieve this the new Development Law contains provisions with regard to the granting of aid, the acceleration of authorisation and investment evaluation and control processes, the development of country's human resources, the granting of incentives for international investors and the development of networks and synergies.

Also, special rules have been adopted with regard to the implementation and completion of investment projects, especially in the context of encouraging mergers and developing sections and interventions to enhance healthy and targeted entrepreneurship with a special emphasis on small and medium entrepreneurship.

ii 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.

iii 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 15 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 15 per cent, income between €12,001 and €35,000 is subject to tax at the rate of 35 per cent, while income exceeding €35,000 is subject to tax at the rate of 45 per cent. The law provides for the tax deductibility of specific expenses incurred.

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 24 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 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 31 December 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 €2.5 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.

As regards 'new' leases (i.e., concluded after 28 February 2014), after taking into consideration the continuation of the Greek financial crisis, Greek courts recently ruled that in the case of early termination there is no obligation for the lessee to pay the remaining rent for the minimum three-year lease term.

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 successful completion of the Athens Hilton acquisition by a Greek and Turkish investment consortium and of the five-star Astir Palace Vouliagmeni Resort privatisation, in the context of which the Hellenic Republic and the National Bank of Greece acted as sellers and a Middle Eastern sovereign and private equity fund was the purchaser – both projects that were completed during the last quarter of 2016 – send a strong signal to potential international investors that there are significant investment opportunities in the Greek real estate market, especially on large touristic projects.

Critical factors for the strengthening of the interest of international investors in the Greek real estate market will be the continuation of the necessary reforms by the Greek government, as those were agreed between Greece and its international creditors, namely the European Commission, the Greek government and the Bank of Greece (and the IMF), aiming to also facilitate foreign investments and also including the final settlement of the NPL issue pursuant to the adoption of the necessary legislative provisions.

Appendix 1

ABOUT THE AUTHORS

NIKOS A VOUIOUNIS

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 the development of high-value touristic, primary and secondary residential and commercial projects, in the context of which he has acquired substantial knowledge on town planning, forestry and archaeological issues. He has successfully advised institutional investors, private equity funds and touristic and commercial operators entering the Greek market on major real estate projects, including the development, acquisition and commercialisation of residential complexes and touristic facilities, commercial malls and office space buildings. 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.

He is an expert in drafting commercial lease, long term lease, sale and lease back and cooperation agreements for hotel and cinema operators, retailers and other businesses. Nikos' 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.

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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 is specialised in retail and commercial real estate and significant land development projects.

Her extensive real estate experience encompasses advice on the acquisition and sale of real estate including commercial, residential, hotel and leisure developments and construction contracts. In this context she has also advised on town planning and forestry issues. She acts for investors, private equity funds, developers and managers with respect to a variety of high-end hotel projects and is active in teams working with real estate consultants, architects, engineers and other professionals. She handles both real estate asset transactions (asset deals) and corporate real estate transactions (share deals).

Christina also has specific expertise in 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. Christina also has experience of acting in public and private mergers and acquisitions, including due diligence and share capital increases. She undertakes company structuring and formation and ongoing corporate governance and advises on regulatory compliance. She also structures, drafts and negotiates commercial agency, commercial lease, share sale and purchase, share contribution and other commercial agreements.

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