

# Structured Finance & Securitisation

in Greece

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# Table of contents

## GENERAL FRAMEWORK

Legislation

Applicable transactions

Market climate

## REGULATION

Regulatory authorities

Licensing and authorisation requirements

Sanctions

Public disclosure requirements

## ELIGIBILITY

Originators

Receivables

Investors

Custodians/servicers

Public-sector involvement

## TRANSACTIONAL ISSUES

SPV forms

SPV formation process

Governing law

Asset acquisition and transfer

Registration

Obligor notification

Credit rating agencies

Directors' and officers' duties

Risk exposure

## SECURITY

Types

Perfection

Enforcement

Commingling risk

## **TAXATION**

**Originators**

**Issuers**

**Investors**

## **BANKRUPTCY**

**Bankruptcy remoteness**

**True sale**

**Consolidation of assets and liabilities**

## **UPDATES AND TRENDS**

**Key developments of the past year**

## **LAW STATED DATE**

**Correct on**

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### Greece



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## GENERAL FRAMEWORK

### Legislation

What legislation governs securitisation in your jurisdiction? Has your jurisdiction enacted a specific securitisation law?

Securitisation is regulated in Greece by Law 3156/2003 (the GSL), which was enacted in 2003 to provide the framework for securitising trade receivables and real estate receivables. The GSL, as regards trade receivables, has been proven a complete and comprehensive legal instrument and has been successfully applied with practically no amendments since its introduction. The Greek market has known only a couple of transactions by originators outside the banking business environment as, until now, the vast majority of securitisation transactions in Greece have been transfers of loan and credit portfolios by banks and other financial institutions.

Moreover, there have been no real estate assets securitisations in Greece, owing to the relevant provisions of the GSL being quite restrictive and unattractive (indicatively the originator has to be the Greek state, a Greek state-owned company, a bank, an insurance company or any other company that is either 100 per cent owned by the above or listed with the Athens Exchange and having total assets exceeding €350 million, the transferee has to be established in Greece, etc), and hence have not been applied.

Therefore, the following analysis will focus only on receivables securitisations in Greece.

Securitisations in Greece are governed by the GSL (articles 10, 13 and 14 of Law 3156/2003) and complimented by the Greek Civil Code provisions on sale and assignment.

To the extent transactions are within the scope of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 (the Securitisation Regulation), the Securitisation Regulation will apply together with its related binding technical standards, guidelines and applicable rules of the Capital Requirements Regulation.

### Applicable transactions

Does your jurisdiction define which types of transactions constitute securitisations?

The GSL contains express provisions setting out a framework for the assignment and securitisation of receivables in connection with claims, existing or future, originated and resulting from the business activity of a commercial entity resident in Greece or a non-Greek resident having an establishment in Greece.

Receivables' securitisation is defined by the GSL as a transfer of business claims by way of sale in the form of a written agreement executed between the originator and the transferee in combination with the issue and offer, by private placement only, of any kind of notes having a minimum nominal value of €100,000, the repayment of which is funded by the proceeds of the transferred business claims or loans, credits or financial derivative agreements.

### Market climate

How large is the market for securitisations in your jurisdiction?

Since the introduction of the GSL in 2003, the Greek securitisation market has primarily been driven by transactions of loans and credit transfers by the Greek banks and their leasing subsidiaries. The structures entailed full risk transfer to enhance regulatory capital and to raise funds from the capital markets until 2007-2008, when because of the global financial crisis and the collapse of the global securitisation markets, Greek banks disposed of portfolios via retained securitisations for liquidity purposes. During the Greek sovereign debt crisis, securitisation transactions were

practically abandoned as Greek banks faced severe capitalisation issues and the country's risk became prohibitive for investment.

Following their successful recapitalisation, Greek banks were also required to deal with non-performing loans (NPLs) and non-performing exposures (NPEs) volumes, which, primarily due to the Greek financial crisis, had increased massively. To deal with the issue, Law 4354/2015 (the NPL Law) was passed in 2015 to create a framework regulating the acquisition of NPLs and licensed loan servicers. The law underwent multiple amendments before recently becoming effective. Although it was initially intended to capture NPLs, the NPL Law has in the meantime been expanded to cover the servicing and acquisition of all forms of bank and credit receivables, introducing a parallel or complementary procedure to the one of the GSL. As a result, the GSL is now used by Greek banks to dispose of loan portfolios in combination with the NPL Law.

With about €75 billion in NPLs as of mid-2019, equivalent to 43.6 per cent of all loans (an NPL ratio significantly higher than the EU average), ambitious targets for NPL reduction have been agreed between the four systemic banks and the European Central Bank/Single Supervisory Mechanism, and by the Bank of Greece for smaller banks to reduce risk by the end of 2020 and by the end of 2021.

Moreover, in December 2019, the Greek parliament voted on Law 4649/2019 introducing Programme Hercules, the Greek state guarantee scheme for banking securitisations following EU Commission Decision No. 10.10.2019 C (2019) 7309 approving the terms of the Greek support scheme.

Programme Hercules and the necessity for a risk reduction in the banking sector will drive the market to remain vibrant in the coming two years, at least with regards to loan and credit receivables. Moreover, as appetite rises for investors to enter the Greek market following positive signs of a steady recovery, securitisations (and covered notes issuances) have again become ways for Greek banks to secure funding.

## REGULATION

### Regulatory authorities

Which body has responsibility for the regulation of securitisation?

Securitisation is not a regulated activity in Greece. Monitoring and supervision depends primarily on the jurisdictions of the SPV establishment and of the listing of the notes. Supervisions rules may apply as well if the originator is a regulated entity, such as a bank.

The GSL requires that the special purpose vehicle (SPV) submits to the Bank of Greece and the Hellenic Capital Market Commission, on an annual basis, a valuation report of any real estate property held by it and the liquidation value of all the assets thereof (including loan receivables) to be audited by statutory auditors under International Financial Reporting Standards.

The GSL does not impose any specific obligations on the issuer or the servicer to provide any information or element relating to claims and the respective borrowers, collections, etc. Information obligations are freely regulated and governed primarily by the terms of the transaction and the terms of the notes.

### Licensing and authorisation requirements

Must originators, servicers or issuers be licensed?

Originators and issuers are not required to be licensed under the GSL.

Limitations apply as to which entity can become a servicer of the securitisation portfolio and which bank can become an account bank.

What will the regulator consider before granting, refusing or withdrawing authorisation?

Not applicable.

### Sanctions

What sanctions can the regulator impose?

Not applicable.

### Public disclosure requirements

What are the public disclosure requirements for issuance of a securitisation?

Not applicable.

What are the ongoing public disclosure requirements following a securitisation issuance?

Not applicable.

## ELIGIBILITY

### Originators

Outside licensing considerations, are there any restrictions on which entities can be originators?

In accordance with the GSL, an originator has to be a person having commercial activity in Greece and either a Greek resident or having a permanent establishment in Greece.

### Receivables

What types of receivables or other assets can be securitised?

The receivables transferred for securitisation purposes have to be business claims, against any third party, even against consumers, arising in the course of the business of the originator. The receivables can be existing or future, provided that they can be defined in any way, or conditional and transferred together with any and all ancillary rights, collateral and other related rights, including formative rights (ie, rights to terminate, amend or create unilaterally the underlying legal relationship).

The receivables are transferred to the issuer on their existing condition (as-is) since the sale and transfer by way of securitisation does not alter the substantial, procedural and tax treatment of the transferred claims and the relevant rights, as those existed before the transfer. Any special privileges or characteristics of the transferred claims and rights regarding enforcement, tax reductions and exemptions, related fees of any kind, even if strictly attached to the nature of business of the originator, continue to exist and are maintained in favour of the SPV.

Obligations or liabilities of whatever form of the originator to any third parties related to the portfolio (including, for example, any obligations for committed and non-utilised loan amounts) or other monetary or non-monetary liabilities

towards the debtors of the receivables are not transferred to the SPV according to the GSL.

### Investors

Are there any limitations on the classes of investors that can participate in an offering in a securitisation transaction?

According to the GSL, the notes issued by the SPV must be offered in any jurisdiction by private placement only, and hence for these purposes, the term 'private placement' should be interpreted as an offering of securities in other jurisdictions not addressed to the public. As regards Greece, the term 'private placement' is defined to mean the offer of the securities in Greece to a limited number of persons not exceeding 150. It should be noted, though, that the GSL does not expressly provide for any sanctions in case of breach of the above restriction.

For securitisations falling within the scope of the Securitisation Regulation, it is prohibited for the notes to be offered in the retail market.

### Custodians/servicers

Who may act as custodian, account bank and portfolio administrator or servicer for the securitised assets and the securities?

No specific provisions are found in the GSL on the parallel roles and activities in a securitisation structure. The role of custodian or the note trustee will be regulated by the law governing the transaction documents and so will be the role of the cash manager. As regards the account bank, the GSL provides for an indirect restriction: given that the law provides for the obligation of the servicer to deposit securitisation proceeds following collection thereof to an interest-bearing deposit with a credit institution in Greece or active within the European Economic Area (EEA), the account bank where the initial collection account is held has to be a bank meeting those criteria.

However, the GSL contains limitations as regards the servicing and administration of the securitised receivables. Namely, the collection and, generally, the management of the transferred receivables can be assigned to a credit or financial institution, which legally provides services according to its scope within the EEA, or to any third party, provided that the latter was either a guarantor to the transferred receivables or was entrusted with the management or collection of the receivables prior to their transfer, to remain with the originator. Moreover, if the SPV does not have an establishment in Greece and the transferred receivables are claims against consumers payable in Greece, the servicer must have an establishment in Greece.

Regulated servicers established and licensed under the NPL Law in Greece fall in the category of financial institutions, and therefore are permitted to act also as servicers under the GSL, in transactions combining application of the NPL and the GSL.

### Public-sector involvement

Are there any special considerations for securitisations involving receivables with a public-sector element?

Under the GSL, receivables have to be business receivables against any third party with no limitation. Consequently, trade receivables against the Greek state or any public entity are eligible for securitisation. Additionally, as part of the simultaneous transfer of ancillary rights, state guarantees on receivables are transferred to the benefit of the originator.

Under Programme Hercules, Greek banks will not be allowed to include in the portfolios to be securitised loans that



benefit from state guarantees.

Public receivables cannot be securitised under the GSL. There is a separate law that allows Greek state and public-sector entities to securitise their receivables by issuing revenue certificates.

### TRANSACTIONAL ISSUES

#### SPV forms

Which forms can special purpose vehicles take in a securitisation transaction?

The GSL requires that the issuer and transferee is an SPV, having as exclusive scope the acquisition of business receivables and the issuance of the notes to fund the transaction. If established in Greece, the SPV has to be in the form of a société anonyme, governed by the relevant provisions of Greek corporate law, as well as the provisions of legislative decree of 17 July/13 August 1923, which grants certain benefits as regards collateral and enforcement to companies falling within its ambit.

#### SPV formation process

What is involved in forming the different types of SPVs in your jurisdiction?

The market practice has been that the SPV is established in jurisdictions other than Greece, preferably with beneficial double taxation treaties with Greece and countries allowing the establishment and operation of orphan vehicles to avoid consolidation with the originator. The United Kingdom, Ireland and Luxembourg have been the top picks for investors and originators to set up an SPV.

If established in Greece, the société anonyme will require a minimum share capital of €25,000, and the process for establishment and registration with the General Commercial Registry may take up to one week from the date of filing the request and the deed of establishment that includes the articles of association.

#### Governing law

Is it possible to stipulate which jurisdiction's law applies to the assignment of receivables to the SPV?

The parties can freely select the governing law applying to the sale and assignment of the receivables to the SPV. However, according to the Rome I Regulation, Greek law will continue to govern the assignability of the receivables, the relationship between the SPV and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.

#### Asset acquisition and transfer

May an SPV acquire new assets or transfer its assets after issuance of its securities? Under what conditions?

The GSL provides explicitly for the possibility of transferring new receivables to the issuer under the same structure to be additional to the already securitised receivables, provided that such transfer and addition does not cause the downgrading of the credit rating of the notes.

## Registration

What are the registration requirements for a securitisation?

According to the GSL, the summary of the receivables' sale agreement and the summary of the servicing agreement have to be registered with the relevant public registry, this being the pledge registry of the registered seat of the originator. The transfer as well as all other effects of the securitisation of the receivables happens automatically upon such registration.

## Obligor notification

Must obligors be informed of the securitisation? How is notification effected?

Under the GSL, the registration of the transfer agreement with the public records:

- automatically overrides any pre-existing agreements between the transferor and third parties that may prohibit or limit the transferability (assignability) of the receivables and consequently no consent is required at the debtor's level for a valid transfer of the claim; and
- is deemed as due notification to each of the obligors, so that no actual notifications need to take place as one would have to do under a common assignment for the third-party debtors to become obligors to the assignees.

However, under the data protection legislation, individual obligors should be notified of the transfer of their personal data to the SPV and the servicer.

What confidentiality and data protection measures are required to protect obligors in a securitisation? Is waiver of confidentiality possible?

Any information relating to the securitised receivables and the underlying relationship can be freely disclosed by the originator to the SPV and the noteholders, although both the issuer and the noteholders are required to comply with all applicable confidentiality duties regarding the disclosure of such information to any third parties. The same principle applies for Greek banking secrecy laws, which do not apply to information shared between the originator bank, the SPV and its noteholders, but the SPV and the noteholders have to comply with these laws when dealing with third parties.

As regards personal data, processing concerning the obligors to the extent necessary for the purposes of securitisation of receivables does not require prior approval or approval by the debtor.

## Credit rating agencies

Are there any rules regulating the relationship between credit rating agencies and issuers? What factors do ratings agencies focus on when rating securitised issuances?

Not applicable.

## Directors' and officers' duties

What are the chief duties of directors and officers of SPVs? Must they be independent of the originator and owner of the SPV?

Not applicable.

### **Risk exposure**

Are there regulations requiring originators and arrangers to retain some exposure to risk in a securitisation?

Not applicable.

## **SECURITY**

### **Types**

What types of collateral/security are typically granted to investors in a securitisation in your jurisdiction?

Following the transfer of the receivables and the registration of the summary of the receivables sale agreement, no security interest or encumbrance can be created over the receivables other than the interest that is created pursuant to the GSL, which comprises a pledge operating by law over the receivables in favour of the holders of the notes issued in connection with the securitisation of the receivables and also in favour of the other creditors of the SPV.

Similarly, a pledge operating by law is established on the collection account for the benefit of the noteholders and all other creditors of the SPV.

The claims of the holders of the notes issued to fund or in connection with the securitisation of and also of the other creditors of the SPV will rank ahead of the claims of any statutory preferential creditors in the case of enforcement of the above pledges.

### **Perfection**

How is the interest of investors in a securitisation in the underlying security perfected in your jurisdiction?

As stipulated above, the registration of the sale agreement with the public registry operates as the only perfection requirement for the statutory pledge to operate over the receivables and the collection account.

### **Enforcement**

How do investors enforce their security interest?

According to the GSL and the operation of the pledge on the securitised assets and account, the noteholders will collect all amounts due under the receivables or standing to the credit of the collections account without any need for enforcement or litigation.

## Commingling risk

### Is commingling risk relating to collections an issue in your jurisdiction?

According to the GSL, the servicer of the receivables has to deposit all collections in a special account held by it (if a bank) or with a bank operating in the EEA. This collections account has to be set up and clearly designated by the account bank as a deposit in the name of the issuer separate from the originator's bankruptcy estate, and the account bank's insolvency. The collection account and the monies standing to its credit are completely immune to attachment, set-off or any other encumbrance sought to be imposed by any creditor of the originator, the servicer, or by the account bank's creditors.

Commingling risk exists, in the event of insolvency of the account bank under applicable Greek law, as the monies then standing to the credit of the issuer's collection account may be considered as part of the bankruptcy estate of the account bank owing to the legal status of money notes (which cannot be separated or distinguished from other money notes kept by the bank); under Greek law, monies deposited with a bank are considered as being transferred to the bank by way of ownership, because the bank can use them at its discretion (commingling risk). If commingling risk materialises, the issuer will, as an unsecured creditor in respect of its claim for the monies standing to the credit of the collection account, rank *pari passu* with the other unsecured creditors of the Greek account bank and will be treated as a creditor of the bankruptcy estate of the account bank to the extent of such commingling risk.

Similar to the commingling risk, a securitisation structure can be subject to set-off risk, as according to Greek law a debtor can invoke set-off against the issuer as assignee for monetary obligations of the originator, provided that the legal basis of such claims existed at the time of registration of the securitisation sale agreement and provided that such claims against the originator become due and payable not later than the time when the claims arising from the respective receivables become due and payable.

## TAXATION

### Originators

#### What are the primary tax considerations for originators in your jurisdiction?

There are no specific tax considerations for originators, as the GSL encompasses tax provisions allowing a tax- and cost-efficient transfer of the receivables. In detail, the issue of notes for the funding of the structure, the granting of any kind of collateral, all the agreements provided by the GSL as well as any relevant, related or ancillary agreement or act and their registration in public records (where this is necessary), the temporary or final titles of notes, their offer and circulation, the payment of the principal of such notes and business receivables and in general the exercise of rights arising from the notes issued in accordance with the GSL or arising from the underlying business receivables, the transfer of notes on or off an organised market or a stock exchange, are exempted from all direct or indirect taxes, including capital gains tax, value added tax, retributive levy, stamp duty, levy of Law 128/75, commission, right or any other surcharge of the state or third parties.

Capped fees apply to the public registries and public notaries, while the transfer of receivables to and from the SPV and the collection of the relevant receivables by it, the entering into derivative agreements, loan agreements or credit agreements are exempted from any direct or indirect tax, value added tax, stamp duty, levy, right or any other charge of the state or third parties.

## Issuers

What are the primary tax considerations for issuers in your jurisdiction? What structures are used to avoid entity-level taxation of issuers?

The complicated tax regulatory environment in Greece is the main consideration for issuers. As a consequence, in all completed transactions in Greece, SPVs were established in jurisdictions with bilateral double taxation treaties with Greece on advantageous terms. The mere fact of acquiring receivables generated in Greece or governed by Greek law will not cause the SPV to be considered as a Greek tax resident as long as the place of management of its operations and the control of its business is not in Greece. Moreover, under the current Greek tax law rules, accounting consolidation will not result in tax consolidation, and therefore, even if the SPV is being consolidated for accounting purposes with the originator, it will not be subject to Greek taxation.

## Investors

What are the primary tax considerations for investors?

Similar to the risk issuers face, the complicated and ambiguous tax framework in Greece is a challenge for investors, despite the fact that, as stated above, the payment of the principal of the notes and in general the exercise of rights arising from the notes issued in accordance with the GSL and the transfer of notes are exempted from all direct or indirect taxes, including capital gains tax, value added tax, retributive levy, stamp duty, levy of Law 128/75, commission, right or any other surcharge of the state or third parties.

## BANKRUPTCY

### Bankruptcy remoteness

How are SPVs made bankruptcy-remote?

The GSL protects the securitisation structure and the noteholders in cases of insolvency and bankruptcy of the originator or the SPV.

Namely, in accordance with the GSL, upon registration of the receivables sale agreement, the validity of the sale and transfer of the securitised receivables and of the ancillary rights and the validity and enforceability of the pledge operating by law on the collections and the collection account is immune and cannot be prejudiced by the imposition of any kind of enforcement or creditors' collective measures restricting the assets of the originator, the SPV, the servicer, a third-party guarantor or a beneficiary of an ancillary right. This is also applicable with regard to future receivables, whose creation is effected after the application of the bankruptcy or the submission of a relevant application.

### True sale

What factors would a court in your jurisdiction consider in making a determination of true sale of the underlying assets to the SPV (eg, absence of recourse for credit losses, arm's length)?

There has been no precedent in Greek case law that would clearly determine in which cases the transfer contemplated in the structure is not a true sale under the GSL. Legal theory and practice have been that the agreements should not include any terms for the transaction to be deemed as a conditional transfer or provide for contractual arrangement such as reversal clauses, which may prejudice the true sale element. As a result, Greek transactions contain narrow

grounds for the issuer to exercise a put option and allow put-backs and call options for limited reasons, mainly associated with the breach of representations and warranties related to the portfolio and to the eligibility criteria as granted by the originator on the date of the transfer and not on a continuous basis. Similarly, early amortisation events for the notes are not expanded to capture the quality of the receivables and they are not in any way connected with the performance of the securitised portfolio.

Transfer of receivables by way of security is explicitly prohibited by law and any such condition in the structure is not valid.

Notwithstanding the above restrictions, according to the GSL, it is permitted to adjust or defer the consideration for the sale or to unwind the transaction by repurchases.

### Consolidation of assets and liabilities

What are the factors that a bankruptcy court would consider in deciding to consolidate the assets and liabilities of the originator and the SPV in your jurisdiction?

Not applicable.

### UPDATES AND TRENDS

#### Key developments of the past year

Are there any rules governing securitisations pending in your jurisdiction or reforms under way, such as prohibitions on financial firms betting against the securities they package, improved disclosure and oversight of the asset-backed securities market, rules limiting bank compensation structures that incentivise risk, etc?

**35 Are there any rules governing securitisations pending in your jurisdiction or reforms under way, such as prohibitions on financial firms betting against the securities they package, improved disclosure and oversight of the asset-backed securities market, rules limiting bank compensation structures that incentivise risk, etc?**

Following the Securitisation Regulation becoming effective, it is expected that some changes to the current law may take place in order to implement the new rules and trends of the European market.

### LAW STATED DATE

#### Correct on

Give the date on which the information above is accurate.