

PANORAMIC

# STRUCTURED FINANCE & SECURITISATION

Greece



LEXOLOGY

# Structured Finance & Securitisation

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

Moreover, there have been no real estate assets securitisations in Greece as the relevant provisions of the GSL are not ultimately suitable or attractive for real estate assets transactions (indicatively, the originator can only 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 must be established in Greece; etc) and hence have not been applied in practice.

Therefore, the analysis in this chapter focuses only on receivables securitisations in Greece. Securitisations in Greece are governed by the GSL (articles 10, 13 and 14 of Law 3156/2003) and complemented by the Greek Civil Code provisions on sale and assignment. To the extent that transactions are within the scope of the Securitisation Regulation (Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017), the securitisation will apply together with its related binding technical standards, guidelines and applicable rules of the Capital Requirements Regulation.

**Law stated - 15 December 2023**

### 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.

**Law stated - 15 December 2023**

## 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 been driven primarily by transactions of loan 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 due to 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 investments.

Following their successful recapitalisation and as part of their reform plan, Greek banks were also required to deal with the volumes of non-performing loans (NPLs) and non-performing exposures, 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 acquisition of NPLs and licensed loan servicers. The law ceased to be effective since the introduction of Law 5072/2023 transposing into Greek legislation EU Directive 2021/2167 on 5 December 2023.

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 legislative toolkit to that of the GSL. This is the case following enactment of Law 5072/2023, as well. As a result, the GSL is now used by Greek banks to dispose of loan portfolios in combination with the NPL Law.

In December 2019, the Greek parliament passed Law 4649/2019 introducing the Hercules programme, 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.

Moreover, (1) in April 2021, following approval from the DG Competition on 9 April 2021, the Hercules programme (named also as Hercules II) was extended by 18 months and the amount of guarantees was increased by another €12.0 billion, with no material changes in its terms, and (2) in December 2023, following approval from the DG Competition on 28 November 2023, the Hercules programme (named also as Hercules III) was extended until 31 December 2024 and the amount of guarantees was increased by another €2.0 billion.

Since systemic banks carved out in 2021 the largest part of their NPL book, the market has remained vibrant, with smaller size securitisations of non-performing 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) are expected to again become ways for Greek banks, but also large corporates to secure external funding. It is noted that in November 2023, the four Greek systemic banks executed a binding agreement for the securitization of a portfolio consisting primarily of non-performing exposures with a total gross book value of approximately €1.2 billion (Project Solar).

**Law stated - 15 December 2023**

## 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 special purpose vehicle (SPV) establishment and the listing of the notes. Supervision rules may apply as well if the originator is a regulated entity (eg, banks).

The Greek Securitisation Law (GSL) requires that the 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 (ie, including loan receivables) to be audited by statutory auditors under International Financial Reporting Standards.

Though 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, Law 5072/2023 has introduced extensive obligations on behalf of the services regarding reporting, governance and the relationship and communication with the borrower. The competent authority for the authorisation and supervision of servicers is the Bank of Greece.

In any case, it is noted that information obligations are governed primarily by the terms of the transaction and the terms of the notes.

**Law stated - 15 December 2023**

## Licensing and authorisation requirements

### Must originators, servicers or issuers be licensed?

Originators and issuers are not required to be licensed under the GSL or under any other regulatory regime in Greece.

Law 5072/2023 set out the conditions a servicer must fulfil in order to be licensed by the Bank of Greece.

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

**Law stated - 15 December 2023**

## Licensing and authorisation requirements

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

Companies that meet the conditions set out in Law 5072/2023 (including minimum capital, country of incorporation, corporate governance, shareholding structure, business plan) can be authorised as servicers by the Bank of Greece.



The Bank of Greece has the power to withdraw a servicer's licence if any of the events exclusively described in Law 5072/2023 occur. Such events include the non-making use of the authorisation within 12 months of its grant, renouncement of the authorisation, acquisition of the authorisation through false statements or irregular means, non-fulfillment of the requirements for the granting of authorisation, and serious infringement of applicable rules (including consumer protection rules).

**Law stated - 15 December 2023**

## **Sanctions**

### **What sanctions can the regulator impose?**

The Bank of Greece is the competent authority to impose administrative penalties and remedial measures. Such sanctions are the:

- withdrawal of authorisation;
- issue of order requiring the servicer to remedy the infringement and cease the infringement conduct and/or desist from repetition of such conduct;
- imposing an administrative pecuniary penalty up to the amount of €500,000;
- publication of an announcement; and
- suspension or termination of the persons participating in the management body or any other persons.

**Law stated - 15 December 2023**

## **Public disclosure requirements**

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

To the extent that the notes issued under a securitisation fall within the exemptions of the Prospectus Regulation (Regulation (EU) 2017/1129), no other specific public disclosure requirements apply.

**Law stated - 15 December 2023**

## **Public disclosure requirements**

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

Though Law 5072/2023 contains servicers' disclosure requirements towards borrowers and the regulatory authority, there are no public disclosure requirements following a securitisation issuance.

**Law stated - 15 December 2023**

## ELIGIBILITY

### Originators

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

In accordance with the Greek Securitisation Law (GSL), an originator must be a person having commercial activity in Greece and being either a Greek resident or having a permanent establishment in Greece.

Law stated - 15 December 2023

### Receivables

#### What types of receivables or other assets can be securitised?

The receivables transferred for securitisation purposes must 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 are conditional and are transferred together with any and all ancillary rights, collateral and other related rights, including formative rights (ie, rights to unilaterally terminate, amend or create the underlying legal relationship).

The receivables are transferred to the issuer in their existing condition (as is) because 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, and 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 special purpose vehicle (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.

Law stated - 15 December 2023

### 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 such other jurisdictions not addressed to the public. With regard to Greece, the term 'private placement' is defined to mean the offer of securities in Greece to a limited number of persons, not exceeding 150. The GSL does not expressly provide for any sanctions in the 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.

**Law stated - 15 December 2023**

### **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 the custodian or note trustee will be regulated by the law governing the transaction documents, as will the role of the cash manager. With regard to 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, the account bank where the initial collection account is held must be a bank meeting those criteria.

The GSL contains limitations with regard to 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 that legally provides services according to its scope within the European Economic Area, 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 Law 5072/2023 in Greece are explicitly permitted to act also as servicers under the GSL.

**Law stated - 15 December 2023**

### **Public-sector involvement**

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

Under the GSL, receivables must 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 the Hercules programme the Greek banks are not allowed to include loans that benefit from state guarantees in the portfolios to be securitised.

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.

Law stated - 15 December 2023

## TRANSACTIONAL ISSUES

### SPV forms

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

The Greek Securitisation Law (GSL) requires that the issuer and transferee form a special purpose vehicle having as exclusive scope the acquisition of business receivables and the issuance of the notes to fund the transaction. If established in Greece the special purpose vehicle (SPV) must 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 17 July/13 August 1923, which grants certain benefits with regard to collateral and enforcement to companies falling within its ambit.

Law stated - 15 December 2023

### SPV formation process

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

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 the 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, which includes the articles of association.

Law stated - 15 December 2023

### 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.

Law stated - 15 December 2023

### **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 to transfer new receivables to the issuer under the same structure additional to the already securitised receivables, provided that such transfer and addition does not cause the downgrading of the credit rating of the notes.

**Law stated - 15 December 2023**

### **Registration**

#### **What are the registration requirements for a securitisation?**

According to the GSL, the summary of the receivable's sale agreement and the summary of the servicing agreement must be registered with the relevant public registry, 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.

**Law stated - 15 December 2023**

### **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 data protection legislation individual obligors should be notified of the transfer of their personal data to the SPV and the servicer.

**Law stated - 15 December 2023**

### **Obligor notification**

#### **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 with regard to 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; however, the SPV and the noteholders must comply with this principle when dealing with third parties.

With regard to 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.

Law stated - 15 December 2023

### **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?

There are no such rules.

Law stated - 15 December 2023

### **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?

There are no specific duties.

Law stated - 15 December 2023

### **Risk exposure**

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

Other than the risk retention obligations provided under the Securitisation Regulation (Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017) and for securitisations falling within its scope, there are no Greek law specific retention obligations.

Law stated - 15 December 2023

## **SECURITY**

### **Types**

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

Pursuant to the Greek Securitisation Law (GSL), following the transfer of the receivables, which is effected through the registration of a summary of the loan sale agreement with the competent pledge registry, a pledge operating by law is created over the transferred receivables. No other security interest can be created over the transferred receivables, other than the statutory pledge provided for in the GSL.

Similarly, a statutory pledge is established over the collection account, maintained in the name of the acquiring entity with a credit institution inside the EEA. Given that the GSL does not provide for any restriction for the creation of any additional pledge over the collection account (unlike in case of the receivables), a second ranking pledge over collection account may be contractually agreed between the special purpose vehicle (SPV) and a third-party creditor. Both the pledge over the receivables and the pledge over the collection account secure the claims of the noteholders and any other creditors of the SPV.

The claims of the secured creditors described above rank ahead of the claims of any statutory preferential creditors in the case of enforcement of the statutory pledges described above.

**Law stated - 15 December 2023**

## **Perfection**

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

The sole perfection requirement for the statutory pledges over the transferred receivables and the collection account is the registration of the relevant loan sale agreement, under which the receivables are transferred, with the competent pledge registry. The transfer of the loan receivables is effected through such registration and, thereafter, the statutory pledges are not affected by any collective measures for the satisfaction of claims of other creditors, which prohibits or restricts the power of the transferor, the SPV or servicer to dispose of assets, nor by the filing of any claim against those entities.

**Law stated - 15 December 2023**

## **Enforcement**

### **How do investors enforce their security interest?**

According to the GSL and the operation of the statutory pledge on the transferred receivables and the collection account, the noteholders will collect all amounts due under the receivables or standing to the credit of the collection account without any need for enforcement or litigation, provided, of course, that there is an event of default under the terms of the applicable terms and conditions of the notes issued.

**Law stated - 15 December 2023**

## **Commingling risk**

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

The GSL provides for a special account held with a credit institution operating inside the EEA, to which the servicer must deposit any collections relating to the portfolio. The account must be clearly designated by the account bank as deposit in the name of the issuer clearly stating that such deposit is separate for the servicer's and the account bank's assets. Additionally, any monies standing to the credit of the collection account are not subject to any set-off, attachment, or any other encumbrance to be potentially imposed by the servicer and the servicer's or the account bank's creditors.

Commingling risk may arise in case of insolvency of the account bank, since in such case all monies held by the account bank will be treated as bankruptcy estate of the account bank due to the legal status of money notes (which cannot be separated or distinguished from other money notes kept by the bank). 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.

It should also be noted that the securitised receivables may be subject to set-off risk, since under Greek law a debtor can invoke set-off against the issuer as assignee for monetary obligations of the originator, provided that the legal basis for such claims existed at the time of registration of the loan 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.

**Law stated - 15 December 2023**

## TAXATION

### Originators

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

There are no tax considerations for originators. Under the Greek Securitisation Law (GSL), the issuance of notes, the granting of any kind of collateral and all the agreements provided by the GSL, as well as any relevant or related or ancillary agreement or act and their registration in public records, 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; and 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.

Fixed fees and charger 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, and the entering into derivative agreements or 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.



Law stated - 15 December 2023

## 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 the 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.

Law stated - 15 December 2023

## Investors

What are the primary tax considerations for investors?

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. However, the complicated tax scheme in Greece is the primary tax consideration for investors.

Law stated - 15 December 2023

## BANKRUPTCY

### Bankruptcy remoteness

How are SPVs made bankruptcy-remote?

The Greek Securitisation Law (GSL) protects the securitisation structure and the note holders in the event of insolvency and bankruptcy of the originator and or the special purpose vehicle (SPV).

In accordance with the GSL, upon registration of the loan sale agreement with the public registry the validity of the sale and transfer of the securitised receivables and of the ancillary rights and the validity and enforceability of the statutory pledge on the transferred receivables and the collection account cannot be prejudiced by 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 also applies to future receivables, whose creation is effected after the application of the bankruptcy or the submission of a relevant application.

Law stated - 15 December 2023

### **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 allow a clear determination of in which circumstances the transfer contemplated in the structure is not a true sale under the GSL. The GSL explicitly prohibits the transfer of receivables by way of security. Save for the above restriction, the adjustment or deferral of the consideration is permitted, and the GSL explicitly provides for the right of the bank and the SPV to enter into repurchase agreements.

Law stated - 15 December 2023

### **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?

There are no such factors in Greece.

Law stated - 15 December 2023

## **UPDATE 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?

There are no such rules in Greece.

Law stated - 15 December 2023

### **Key developments of the past year**

What legislation or government or industry initiatives are in place or contemplated to address the termination of LIBOR and transition to a substitute rate?

Other than Regulation (EU) 2021/168 amending the Benchmark Regulation (Regulation (EU) 2016/1011), there are no Greek governmental or industry initiatives at this point of time.

Law stated - 15 December 2023