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The International Comparative Legal Guide to:

Securitisation 2018

11th Edition

A practical cross-border insight into securitisation work

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EDITORIAL

Welcome to the eleventh edition of *The International Comparative Legal Guide to: Securitisation*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of securitisation.

It is divided into two main sections:

Five general chapters. These chapters are designed to provide readers with an overview of key securitisation issues, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in securitisation laws and regulations in 27 jurisdictions.

All chapters are written by leading securitisation lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Sanjev Warna-kula-suriya of Latham & Watkins LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

(a) Under Greek law, it is not necessary for the creation of an enforceable debt obligation of the debtor that a sale of goods or the provision of services is evidenced by a formal receivables contract, unless otherwise provided by law (see article 158 of the Greek Civil Code – **GCC**). Examples of such formality requirement may be found in the field of regulated financial services, consumer protection legislation or in respect of real property transfer.

(b) An invoice alone can be sufficient to create an enforceable debt obligation. Depending on its terms, it may represent the contract between the parties or evidence the respective debt obligation and, to the extent accepted by the obligor, it can be used, without any other supporting documentation, for the issuance of a court payment order.

(c) An oral agreement on the sale of goods or the provision of services or an implied agreement that is deemed to exist on the basis of certain facts and circumstances (including the behaviour of the parties) is sufficient to constitute a binding contract. In all cases, it is for the competent court to decide the specifics and the enforceability of the debt obligation arising under such contract.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

(a) Non-banking interest rates and default interest rates for contractual obligations are subject to certain limits that are adjusted periodically by reference to the ECB interest rates. Compound interest is allowed, subject to certain restrictions.

Banking interest rates may be freely determined on the basis of applicable banking legislation. However, banking interest rates and compound interest are subject to certain restrictions, mainly concerning the criteria for their setting, the unilateral change by the banks and the frequency of interest capitalisation.

(b) A statutory right to interest on late payments in commercial transactions is provided by virtue of Paragraph Z of Greek law 4152/2013 that transposed the Late Payment Directive (i.e. Directive 2011/7/EU on combatting late payment in commercial transactions) into Greek legislation. For contracts concluded prior to the entry into force of said law (i.e. 16 March 2013), the provisions of Presidential Decree 166/2003, which was previously in force and implemented Directive 2000/35/EC, shall be applicable.

(c) The GCC provides for the general right of the purchaser to, *inter alia*, withdraw from a sales contract in case of actual defect or lack of agreed quality. Furthermore, consumer protection legislation provides for the right of the consumer to cancel, under certain circumstances, a contract within 14 days from its conclusion or from the notification of the contract's terms and conditions (if later).

(d) Greek law is harmonised with the European legal framework regulating consumer protection and in this respect it includes effective provisions relating to the content of standard terms and conditions of consumer contracts and the corresponding rights of the consumer to deny payment on the basis of abusive terms and conditions, notification obligations, etc. Furthermore, there is extensive court precedence regulating these issues.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

In general, the sale of goods or the provision of services to the state authorities and the public sector are governed by the specific provisions of the European legislation regulating public procurement, as these have been transposed into Greek legislation, and the special Greek law provisions that reserve favourable treatment to the Greek state in a series of matters (e.g. prolonged deadlines, prolonged prescription periods, special approval and/or authorisations required for the validity of certain contracts concluded with the state, special notification mechanisms, special requirements for enforcement against only the private property of the state authorities and not against property destined for public use).

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

In cases where both the seller and the obligor are Greek residents, delivery is agreed to take place in Greece and there are no foreign elements in their receivables contract, Greek law will apply. In cases where one of the parties is not a Greek resident and/or delivery is agreed to take place outside Greece and/or other foreign elements appear in the receivables contract, the governing law thereto will be determined, in the absence of a specific choice of law, pursuant to Regulation (EC) 593/2008 on the law applicable to contractual obligations (**Rome I Regulation**), which is directly applicable in Greece. In this respect, pursuant to article 4 of Rome I the receivables contract shall be governed by:

(a) the law determined pursuant to the criteria of article 4 par. 1, designating as applicable the law of the seller's or service provider's habitual residence; or, if this is not possible

(b) the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence (article 4 par. 2); or, if this is not possible

(c) the law of the country with which the contract is most closely connected (article 4 par. 4).

Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in article 4 par. 1 or 2, the law of that other country shall apply.

Specific contracts are regulated by special private international law provisions (such as consumer contracts and contracts of carriage).

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

No, a Greek court would give effect to the parties' choice of law.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

Pursuant to Rome I Regulation, a contract shall be governed by the law chosen by the contracting parties. Therefore, the parties are free to choose a law other than Greek law governing the receivables contract. However, this is with the proviso that where all other elements relevant to the situation at the time of the choice are located in Greece only, the choice of the parties shall not prejudice the application of provisions of the law of Greece which cannot be derogated from by agreement, and Greek courts may refuse to apply provisions that are considered contrary to Greek rules of mandatory law within the meaning of article 9 or to Greek public order within the meaning of article 21 of the Rome I Regulation. Additional exceptions apply to certain types of contracts, such as consumer contracts and contracts of carriage as per the respective provisions of the Rome I Regulation.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

Greek law does not require the sales contract to be governed by the same law governing the receivables, irrespective of which law this is. However, the *in rem* transaction, i.e. the transfer of the receivables, shall be governed by the law governing the receivables with respect to the issues referred to in article 14 of the Rome I Regulation.

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

In principle, yes.

Article 14 of the Rome I Regulation provides that the relationship between the assignor (the seller in the example) and the assignee (the purchaser) under a voluntary assignment or contractual subrogation of a claim against another person (the obligor) shall be governed by the law that applies to the contract between the assignor and assignee, while the law governing the assigned claim shall determine the ability to transfer such claim, the relationship between the assignee 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.

As regards, in particular, the sale of receivables for the purpose of a securitisation transaction under Greek law 3156/2003 (the **Securitisation Law**), which is applicable where the seller is a merchant domiciled or operating through a permanent establishment in Greece and the purchaser is a special purpose entity established in Greece or abroad with the sole purpose to acquire business claims and is the issuer of the bonds, certain specific provisions apply regarding the process of sale and transfer of the receivables. In this respect, among other things, a written agreement between the seller and the purchaser is required, which must be recorded in the public pledge registry. The sale of the receivables to be transferred is governed by the provision of the GCC on the sale of goods, unless otherwise provided in the sale contract by the parties, while the transfer agreement is governed by the provisions of the

GCC on assignment, to the extent not contrary to the Securitisation Law. In most Greek securitisation transactions, the parties choose foreign law to govern the sale contract, while the actual transfer (assignment) agreement is governed by Greek law. It is noted that, although a different legal regime applies with respect to the securitisation of receivables where the seller is the Greek state, a legal entity of public law or public enterprise wholly owned by public sector entities, i.e. article 14 of Greek law 2801/2000, the seller and the purchaser may choose the law applicable to the sale contract.

As regards the recognition of the sale against third parties, it can be stated that the transfer of the relevant receivables can be invoked both against the obligor and third parties upon completion of the assignment formalities provided either under the GCC or the Securitisation Law. As regards, in particular, recognition by insolvency administrators, the Securitisation Law provides for the ring-fencing of the securitisation transaction and the transfer against insolvency proceedings for the seller once the publication requirement has been completed.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

To the extent that the receivables are governed by Greek law, Rome I shall apply and Greek law shall be applicable as to the relevant formalities for the validity of the transfer of the receivables, irrespective of the law chosen by the parties or the place of residence of the obligor or the purchaser. Therefore, the Greek courts shall recognise the sale as being effective against the seller and other third parties, under the condition that the formalities of the GCC or the Securitisation Law with regards to the completion of the assignment have been effected. As regards the insolvency of the Greek seller, please refer to the answer to question 3.2 above.

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

Yes, in the sense that the Greek court will not examine compliance with the requirements of Greek law for the sale of the receivables.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

Please refer to the answer to question 3.4 above.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

To the extent that the receivable is governed by Greek law, its transfer should comply with the requirements of Greek law. In this respect, we refer you to the answer to question 3.1 above.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

Receivables are sold by way of a sales contract regulated by the sale of goods provisions of the GCC (articles 514 *et seq.*). The transfer thereof (i.e. the *in rem* transaction) is effected through assignment pursuant to articles 455 *et seq.* of the GCC.

Receivables may also be transferred through special financial structures, such as factoring and forfeiting agreements (Greek law 1905/1990), in case of issuance of specific forms of covered bonds (article 152 of Greek law 4261/2014) or securitisation transactions.

The terms commonly used are "sale" and "transfer" or "assignment", where "assignment" and "transfer" are used interchangeably.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

For sales and transfers effected pursuant to the general provisions of the GCC, the main condition for the perfection of the assignment of a claim against an obligor and third parties is the notification of

the obligor by either the assignor or the assignee. In securitisation transactions, such notification is effected with the registration of the summary of the assignment and transfer agreement in the public registry book in accordance with article 3 of Greek law 2844/2000, kept with the competent pledge registry. Prior to the notification (or the registration in case of securitisation transactions), the assignee bears the risk of the release of the obligor from its obligations upon payment to the assignor and the risk of enforcement by third parties' creditors of the assignor upon the assigned claim, which will continue to be considered property of the assignor, as well as the clawback risk, since the assigned claim will be considered part of the bankruptcy estate.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

Promissory Notes and other forms of marketable debt instruments not registered with a central securities depository are transferred by way of endorsement and delivery to the new holder of the underlying debt. If the marketable debt instruments are registered with a central securities depository, they are transferred by way of a transfer order to the account of the purchaser held with the CSD. Mortgage loans and consumer loans are transferred in accordance with the answer to question 4.1 above. Mortgages and other securities are considered ancillary rights and are transferred together with the secured claims, subject to the relevant formalities (see question 4.11 below).

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

For the notification requirements for the perfection of the transfer, we refer you to the answer to question 4.2.

In general, the consent of the obligor is not required, unless otherwise provided in the underlying contract. With regards to the sale and transfer of receivables under the Securitisation Law in particular, the consent of the obligor is not required, even if it is expressly provided in the underlying contract as a prerequisite for the transferability of the claim. Notification (or registration in the case of securitisation transactions) also serves as a cut-off for the obligor to invoke against the assignee any rights and defences (including set-off) that it had against the assignor prior to such notification (or registration).

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

Greek law does not require any particular form for the notice of assignment, provided that there is sufficient evidence that the notice has been received by the obligor. The method most commonly used is the service of the notice by court bailiff. There are special notification procedures with respect to assignments by way of security, in case the obligor is the state or a state-owned entity, or, in respect of the assignment of non-performing loans under Greek law 4354/2015, as amended and in force. With respect to transfers under the Securitisation Law, in particular, the registration is effected with the execution of a form containing the summary of the transfer and assignment agreement pursuant to the Securitisation Law and Decision of the Minister of Justice No. 161338/30.10.2003 and its registration with the competent pledge registry. No specific time limits for the notification are provided by law, subject always to the risks that may incur prior to the notification as per the answer to question 4.2 above.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

As a general rule, the GCC recognises agreements limiting or restricting the assignability of claims. The presence of a contractual provision in a receivables contract stating that "[n]one of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" may restrict the assignment of the relevant receivable and the consent of the other party would be required for the assignment and transfer of such receivable to the purchaser. However, if the agreement restricts the assignment of the agreement itself or the assignment of the obligations under this agreement only (in this case it is legally more precise to refer to an "assumption of debt"), it might be considered that such restriction refers to the assignment of the agreement and not the assignment of the receivables deriving thereunder. In any case, it is a matter of legal interpretation and Greek courts will focus on the contents of the entire agreement and seek to find the real intention of the parties.

As aforementioned, the transfer and assignment agreements under the Securitisation Law override any assignment restrictions found in receivables contracts.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

Subject to the answers to question 4.6 above, contractual restrictions on transferability are recognised by Greek courts. The obligor may

be entitled to damages mainly on the basis of a breach of the relevant contractual undertaking.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

The assigned claims should be defined or able to be defined. In this respect, they should be described in a clear and unambiguous manner, so as to clearly establish which are transferred to the purchaser and which remain with the seller and to avoid nullity of the transfer on the transferred receivables. The same applies to the identity of the obligor. In case the seller sells all of its receivables to the purchaser, other than receivables owing by one or more specifically identified obligors, the receivables are deemed to be sufficiently identified, to the extent that it may be deduced in a clear manner which receivables are transferred. It is noted that the form registered with the competent pledge registry pursuant to the Securitisation Law also includes a list of the transferred receivables with specific details such as loan ID (where applicable), name and address of obligors/guarantors, amount of the receivables, maturity date and securities.

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

Under Greek law, the legal relationship is characterised taking into account the overall terms agreed by the parties and not just the qualification given by the parties. In this respect, the Greek courts have the authority to examine the true legal nature of the transaction by analysing the agreement and its core elements.

The Securitisation Law requires that the sale of receivables is effected pursuant to the GCC provision on sale of goods and prohibits fiduciary transfers. In this respect, the Securitisation Law allows deferred purchase price mechanisms and provides that collection and servicing of the transferred claims may be effected by the seller in its capacity as servicer (which is common practice in Greece); alternatively, the servicing of the receivables portfolio may be assigned to a credit/financial institution of the EEA (that must have a permanent establishment in Greece, if the receivables are obligations of consumers, payable in Greece) or a third party which has either guaranteed or had undertaken collection of the receivables prior to the completion of the securitisation. Furthermore, repurchase by the seller of all or part of the securitised claims is allowed under the provisions of the Securitisation Law. All such provisions do not jeopardise *per se* the recharacterisation of the transaction.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

Subject to the relevant notification (or registration, as appropriate) formalities being met, continuous sales of receivables are possible, whether under sale and assignment pursuant to the general provisions of the GCC or pursuant to a securitisation transaction. Please also see our answer to question 4.7 above with regards to the identification of the receivables. Regarding transfer following the seller's insolvency, see our answer to question 4.11 below.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to *versus* after the seller's insolvency?

The response to question 4.10 applies accordingly with respect to the transfer of receivables coming into existence after the purchase agreement. As to what is the case for future receivables arising from a legal relationship prior to or post the seller's insolvency there are two prevailing theories regarding the perfection of the assignment. Pursuant to the first view, the assignment is concluded upon the execution of the relevant agreement. In this case, the bankruptcy of the assignor would have no impact on the assignment and the future claim, when it comes into existence, would not form part of its bankruptcy estate but it would belong to the assignee. Pursuant to the second view, the assignment is concluded upon the future claim coming into existence. In this case, if the assignor becomes insolvent prior to the future claim coming into existence, then such claim would not be finally transferred to the assignee and it will become part of its bankruptcy estate.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

The formalities required for the creation of a security must be repeated to perfect their transfer (i.e. (a) registration of the change of the beneficiary of a mortgage/prenotation of mortgage with the competent land registry, (b) endorsement of marketable instruments, (c) court bailiff service of a pledge over receivables, or (d) registration of floating charge/equipment pledge). In securitisation transactions, security interests that are ancillary to the transferred claim are co-transferred to the purchaser upon registration of the transaction with the competent pledge registry, whereas in case of securities *in rem* the change of the beneficiary in the public books is effected by registering the certificate of registration of the securitisation transaction issued by the competent pledge registry (see also the answer to question 5.5 below).

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

An obligor may set off its claims against the seller against the obligor's obligations towards the purchaser, following transfer of the receivables to the purchaser, provided that the legal basis of the obligors' claims against the seller existed at the time of notification (or registration in case of securitisation transactions) of the sale and transfer agreement; and provided that the obligors' claims against the seller become due and payable not later than the time when the claims arising from the receivables become due and payable.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

Common methods for profit extraction, especially in securitisation transactions, are deferred price mechanisms and payment of special servicing fees (when the seller and the servicer are the same entity). Additionally, profit extraction mechanism may take the form of issuance of residual notes subscribed by the seller for a nominal amount and giving right to the excess cash available.

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

No, this is not customary.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

This is not applicable in Greece.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

In general, the security that is established upon claims under Greek law takes the form of a pledge. The establishment of such a pledge requires different formalities depending on the legal framework selected. Generally, pledge under the GCC requires conclusion of a pledge agreement in written form and notification of the establishment of the pledge to the pledgor's debtors. If Legislative Decree 17.7/13.8.1923 on special provisions pertaining to Greek *societes anonymes*, which applies *ipso iure* to banks established in Greece or operating (through a branch) in Greece as pledgees, is opted for, service of a copy of the pledge agreement to the underlying debtors by a court bailiff is required. Registered pledge according to Greek Law 2844/2000 with regard to business claims requires registration of the pledge to the competent pledge registry. Finally, Greek Law 3301/2004 on financial collateral arrangements, to the extent that its provisions are applicable, requires a written pledge agreement and a list of credit claims notified to the collateral taker.

As regards securitisation transactions, the Securitisation Law provides for a pledge by operation of law in favour of the noteholders and the other beneficiaries, which is established over the transferred receivables and collection account maintained by the servicer automatically upon the registration of the receivables assignment and transfer agreement in the public registry book of article 3 of Law 2844/2000 (see above in question 4.2). In respect of pledges established under the Securitisation Law, registration in the public registry book is deemed a notification to the underlying debtors and no individual notifications are required.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

The perfection requirements under Greek law need to be followed.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

With regard to formalities for the pledge of claims, please refer to question 5.3. As regards financial instruments pursuant to article 1244 GCC, for pledges over financial instruments in bearer form ("*anonyma*") (a) an agreement between the pledgee and the pledgor in the form of either a notarial deed or a private agreement bearing a certified ("certain") date, and (b) physical delivery of the eligible collateral to the creditor (pledgee) are required.

A pledge over registered ("*onomastika*") instruments is regulated by the provisions on pledge over rights; namely for the creation of the pledge the following are required: (a) an agreement between the pledgee and the pledgor in the form of either a notarial deed or a private agreement bearing a certified ("certain") date; (b) physical delivery of the eligible collateral to the creditor (pledgee); and (c) notification of the pledge to the debtor to the extent that the instrument incorporates a claim. In the case of registered ("*onomastikes*") shares, endorsement and registration of the pledge in the shareholders' book is additionally required pursuant to article 8b of Codified Law 2190/1920.

As regards the Securitisation Law, any collateral rights are co-transferred to the purchaser together with the receivables. If the receivable is secured through a mortgage or a pre-notice of mortgage or a pledge or other ancillary right or lien, which has been made public by way of its registration with a public registry or record book, in order that the purchaser be able to enforce such security, a certificate by the competent pledge registry confirming registration of a summary of the receivables transfer agreement, and a summary description of the particular security, must be submitted to the

pledge registry where the security was initially registered in order for the registrar to enter a note on such pledge registry's records for the change of beneficiary (see question 4.12).

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

Trust is not recognised by the Greek legal system. The mechanism of segregation of collections out of transferred receivables is achieved through a contractual arrangement with the servicer. According to the Securitisation Law, the servicer is obliged, immediately upon collection, to deposit the proceeds of the securitised receivables in a separate interest bearing account kept with it if the servicer is a credit institution, or otherwise with a credit institution operating in the European Economic Area. Such a deposit must be accompanied with a special note that this constitutes an account separate from the servicer's personal assets and that of the financial institution's where the deposit is made. In addition, a pledge operated by law is automatically established upon such deposit for the benefit of the noteholders. Any such pledge as well as the funds that are collected by the servicer are excluded from foreclosure, set-off or any other attachment whatsoever by the latter or his creditors, nor are they included in the bankruptcy estate of the servicer.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security (for example, an English law debenture) taken over a bank account located in your jurisdiction?

Escrow accounts can be put in place on the basis of contractual arrangements without an *erga omnes* effect. The lien available under Greek law for bank accounts which are governed by Greek law is a pledge over claims which have an *erga omnes* effect. There is no requirement to specify a maximum secured amount. Pledges of this type are expressed to secure all obligations under a specific relation. The only perfection requirement for pledges over claims is the notification of the underlying debtor, i.e. the account bank (see above in question 5.3).

According to international private law rules and article 14 of the Rome I Regulation, the governing law of the pledge is the governing law of the pledged claim. Thus, a Greek law account pledge assumes that the bank account agreement is governed by Greek law. Foreign law can be agreed to govern a bank account by a Greek bank in which case a foreign law lien would be established over the bank account. Pledges are established by operation of law on the collection account maintained in the name of the servicer (see above in question 5.3).

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

A pledge over a bank account entitles the pledgee to satisfy its claim by the proceeds of the pledged bank account upon the secured claim becoming due and payable without being obliged first to acquire the pledgor's consent or a court judgment or order. In effect, upon the occurrence of a default under the transaction documents which gives rise to acceleration, the pledgee shall be entitled, without any further consent or authority from the pledgor, to require the account bank to effect payment of all monies due by it in connection with the bank account directly to the pledgee. According to Greek law, there are several claims that enjoy general privileges such as state and municipality claims, social security contributions, and employee's claims. Claims secured with a pledge enjoy a special privilege, though the following limitations apply in case of a concurrence of general and special privileges and non-privileged claims:

- the percentage of satisfaction of creditors with general privileges from enforcement proceeds is limited to twenty-five per cent (25%);
- the percentage of satisfaction of creditors with special privileges is limited to sixty-five per cent (65%); and
- the remaining ten percent (10%) of the distribution price of the auction is reserved for non-privileged creditors.

According to a recent law amendment, creditors with special privileges (i.e. pledge or mortgage) are ranked before creditors with general privileges and unsecured creditors after the satisfaction of the claims of unpaid employees up to an amount prescribed by law are satisfied. However, the above apply only to claims arising after the entry into force of Law 4512/2018 and if a pledge or mortgage is registered on an asset which is unencumbered.

As regards pledges established by virtue of Legislative Decree 17.7/13.8.1923 (see above in question 5.3), pledges over a bank account are equivalent to assignment of claims to the effect that the claim is entirely alienated from the pledgor and the above risk of satisfaction from the priority of holders of general liens does not exist.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

This is feasible subject to the contractual provisions of the pledge agreement.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

As a general matter, there is no stay of action after the opening of insolvency procedures. However, in case of assignment of receivables outside a securitisation transaction and the ambit of the Securitisation Law, any transfer of receivables is subject to clawback if effected during the suspect period (see question 6.3).

As regards the transfer of receivables in a securitisation transaction as of the moment of the registration, the validity of the sale and transfer is not affected by the imposition of any collective creditors measure that could result in the prohibition or restriction of the transferor's right to dispose of its assets.

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

To the extent that the transfer is perfected properly and the transfer is a true sale and not subject to the restrictions of the suspect period, there is no such possibility.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

Any acts of the debtor effected from the cease of payments up to declaration of bankruptcy – a maximum of two years prior to the declaration of bankruptcy (the so-called "suspect period") – which are detrimental for the creditors, are revoked or are revocable. The Bankruptcy Code makes the following distinctions:

- acts that are mandatorily revoked (endowments and agreements in which the consideration owed by the debtor is disproportional to the benefit thereof, establishment of *in rem* security for securing pre-existing unsecured claims, payment of obligations which have not fallen due); and
- acts which may be optionally revoked (any agreement or payment of an obligation of the debtor to a party which was aware of the cease of payment of the debtor and such act or payment is detrimental to the creditors).

Certain acts are exempted, in particular those performed in the ordinary course of business and those exempted from the insolvency annulment by special laws (e.g. the netting of claims under securities settlement system, transactions related to derivatives, agreements for establishing financial collateral). In addition, such judicial review for the revocation of acts of the debtor can go back five years from the declaration of bankruptcy if the debtor acted fraudulently, aiming at the detriment of its creditors or at favouring some creditors, to the extent that the counterparty was aware of the debtor's fraud. Knowledge of the cease of payment of the debtor and detrimental character of the payment are presumed in case of related parties. Please refer to question 6.1 as regards the ring-fencing achieved in securitisation transactions.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

There are no such provisions under Greek law.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) on sales of receivables that only come into existence after the commencement of such proceedings?

See question 6.1.

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.3 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

A borrower should mandatorily file a petition for declaration into bankruptcy if it is unable in a permanent and generic way to meet its monetary debts which have fallen due and payable. A petition may also be filed to the court by any creditor who has a legitimate interest or the competent district attorney. If there is a limited recourse provision, relevant payment obligations will not become due and thus cannot cause the debtor to become illiquid. However, this would not be the case if a mere subordination has been agreed. In addition, if the debtor cannot meet other obligations which are not subject to limited recourse provisions in a generic manner, bankruptcy is still possible.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics? Is there a regulatory authority responsible for regulating securitisation transactions in your jurisdiction?

The Securitisation Law is the special securitisation law in place. "Securitisation" is defined by said law as a transfer of business claims of contractual or non-contractual nature by way of sale, by means of a written agreement between a party (the transferor) and another party (the transferee) in combination with the issue and offer, by private placement only, of any kind of bonds, the repayment of which is funded by (a) the proceeds of the transferred business claims, or (b) loans, credits or financial derivative agreements. The transferor must be a commercial person resident or having a permanent establishment in Greece. The transferee must be an entity established solely for the purpose of acquiring the business claims and must be the issuer of the bonds. Securitisation is a useful tool for transfer of claims since it provides for some tax benefits and protective provisions for the holders of the bonds. Law 3156/2003 also covers real estate claims. Law 2801/2000 governs

securitisation of state receivables. There is no regulatory authority responsible for securitisation transactions in Greece. The Bank of Greece supervises and regulates the capital adequacy requirements when the originator is a bank.

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

If the Special Purpose Vehicle is established in Greece, it should have the form of company limited by shares (*société anonyme*) and be subject to the laws governing this corporate form. According to Greek law, a *société anonyme* cannot be an orphan vehicle.

Although, according to general law, *sociétés anonyme*s should always have own funds higher than the 1/10 of the share capital, otherwise their licence may be revoked, SPVs are exempted from such requirement. The management of *sociétés anonymes* is entrusted to the Board of Directors and any specifically appointed officers, whereas the general meeting of shareholders is the supreme body of the corporation. The directors owe a fiduciary duty towards the company.

7.3 Location and form of Securitisation Entities. Is it typical to establish the special purpose entity in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the special purpose entity in your jurisdiction? If offshore, where are special purpose entities typically located for securitisations in your jurisdiction? What are the forms that the special purpose entity would normally take in your jurisdiction and how would such entity usually be owned?

Usually in securitisation transactions in Greece, SPVs are structured offshore (typically in the UK due to the favourable double taxation avoidance treaties ensuring that payments from debtors to the SPV can be made free of withholding tax). There are no adverse implications in case an SPV is located abroad, especially in view of par. 13 of Article 14 of the Securitisation Law, according to which all provisions of such law, save the provision for the applicable laws for the establishment and operation of SPV if it is located in Greece, also apply to foreign SPVs. Although Greek SPVs cannot follow the orphan structure, no requirement is set by the Securitisation Law in respect of the shareholding of the SPV, apart from the form of the shares, which are mandatorily registered.

7.4 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

As a general matter, this clause would give effect to this agreement under Greek law subject to the limitations mentioned under question 5.8 and to the extent that it does not contain a limitation of liability arising from grossly negligent (*vareia ameleia*) or fraudulent/wilful conduct (*dolos*). For consumer contracts, stricter rules apply with regard to limitation of liability and exclusion from slight negligence is not feasible. Such laws form part of Greece's public policy and, as such, the validity of provisions in an agreement governed by foreign law in violation of such laws could be challenged before Greek courts.

7.5 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

A Greek court would give effect to a non-petition clause only to the extent that it would give rise to a claim for compensation for any damage incurred by the non-defaulting party. However, any filing of bankruptcy by the defaulting party would not be deemed as invalid by the court.

7.6 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

Please refer to questions 2.2 and 2.3 above. Within the context of enforcement proceedings, the enforceability of such provisions relating to the application of proceeds will be subject to any obligations mandatorily preferred by Greek law. This will be the case even if that agreement's governing law is the law of another country, since these provisions of Greek law constitute public order rules.

7.7 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

The members of the Board of Directors of a *société anonyme* owe a fiduciary duty towards the company and, given the relevant liability and the mandatory character of such provisions of law, a contractual arrangement according to which the members of the Board of Directors of a *société anonyme* are prohibited from taking certain actions to the detriment of the corporate interest would be deemed void even if that agreement's governing law is the law of another country. With regard to commencement of insolvency proceedings, kindly note that any failure of the Board of Directors to commence relevant proceedings, where relevant requirements are fulfilled, entails penal and civil liability for its members.

7.8 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

See question 7.3. The purchaser is not typically established in Greece. This is the case mainly for banking securitisations because, according to Greek law, the SPV cannot be conceived as an orphan entity whereas, again according to Greek law, a global note held by

the common depository system is not conceivable. Bonds held by each bondholder depending on the subscription participation of each of them should be issued.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

There is no such requirement.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third-party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

According to the Securitisation Law, the entity which carries out servicing duties should be a financial or credit institution licensed to offer such services, in accordance with its scope of business, within the European Economic Area. A servicer or third party may act as the transferor, provided the latter acts as the guarantor of the transferred receivables or has been entrusted with the management or collection of the receivables prior to their transfer to the transferee. If the special purpose company does not have its place of business in Greece and the receivables under transfer are receivables against consumers payable in Greece, the parties whom the management has been assigned to must have an establishment in Greece. So, no licence is required for the seller to continue to enforce and collect receivables as the seller.

Appearance in court generally requires the attendance of a lawyer. For the purpose of supporting the appointment of a servicer with regards to certain actions by the servicer that require formal delegation of powers by the SPV (mainly of a judicial nature such as representation before the courts, out-of-court settlements, etc.), it is common that the SPV issues a general power of attorney to the servicer in the form of a notarial act (via the Apostille of the Hague Convention of 1961, if the SPV is foreign) authorising it to manage the affairs deriving from the transfer of the receivables and the service agreement that would otherwise be within the competence of the SPV.

As regards the replacement servicer, it should fulfil the above requirements.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

There are data protection restrictions in Greece in line with relevant European legislation. Par. 21 of Article 10 of the Securitisation Law provides that, to the extent required for the purposes of the securitisation transaction, the processing of personal data of the debtors does not require the prior written consent of the latter, nor the prior approval of the Data Protection Authority.

In any case, par. 21 of Article 10 of the Securitisation Law does not exclude the originator and/or the servicer and/or the SPV from abiding with the rest of the provisions of data protection legislation, which include, *inter alia*, the notification to the Data Protection Authority of the establishment and operation of a personal data record or the commencement of their processing. Data protection laws also apply to enterprises with regard to personal data of individuals (e.g. personal data of shareholders or directors).

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

Consumer protection that is applicable to purchasers can be summarised as follows:

- Terms and conditions of loans that create an unbalance between rights and obligations of the parties to the detriment of the consumers are deemed as abusive and are null and void. Indicative enumeration of abusive terms and conditions are set forth in Greek Law 2251/1994 (Consumer Protection Law) and relevant legislation and have been ruled as such by relevant court precedents. For example, any term of the loan, which grants to the bank the right of unilateral amendment of the interest rate in a loan agreement without objective criteria justifiable by the market conditions, has been found as invalid (see also question 1.2 (d) above).
- The Act of Bank of Greece Governor 2501/2002 introduces minimum information to be provided by the credit institutions to borrowers prior to the conclusion of the loan, including, *inter alia*, the level of the fixed interest rate and any spread thereof, interest periods, special contributions, taxes, duties and other expenses, in the cases of loan agreements with a floating interest rate, the general reference rate as well as default interest should be disclosed. Same legislation imposes on credit institutions the obligation of reporting periodic information of the borrowers and the establishment of a procedure for examination and resolution of complaints.

The above laws also apply to purchasers.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

Generally, there are no such restrictions. Greek courts are obliged to render judgments in respect of claims in foreign currency in such foreign currency but payment thereof will be made in euro at the exchange rate prevailing on the date of such payment, such rate being published in the daily foreign exchange bulletin of the Bank of Greece. Money transfers outside the country are subject to capital control restrictions. However, as regards payments made in the context of securitisation, credit institutions operating in Greece are exempted from such restrictions. Banking institutions are subject to reporting to the Bank of Greece regarding fund transfer for the purposes of avoidance of money laundering.

8.6 Risk Retention. Does your jurisdiction have laws or regulations relating to "risk retention"? How are securitisation transactions in your jurisdiction usually structured to satisfy those risk retention requirements?

Greece follows the risk retention requirements found in the relevant European legislation. In this respect, in the very few securitisation transactions completed in the recent years under Regulation (EU)

575/2013 (Capital Requirements Regulation – **CRR**) that we are aware of, the originators undertook for the purposes of the CRR, Regulation (EU) No 231/2013 (the Alternative Investments Fund Manager Regulation – **AIFM**) and Regulation (EU) 2015/35 (Solvency II Regulation) to retain a material net economic interest of not less than 5% in the securitisation (representing downside risk and economic outlay). Such retention is comprised of the purchase and holding of an interest in the first loss tranche which was equal to at least 5% of the nominal value of the securitised exposures as at the closing of the transaction. Greece is expected to follow the new securitisation regime (and, accordingly, the new rules on risk retention, due diligence and disclosure) of Regulation (EU) 2017/2402 (the STS Regulation) and Regulation (EU) 2017/2401 (the Securitisation Prudential Regulation, or SPR) that will be effective as of 1 January 2019.

8.7 Regulatory Developments. Have there been any regulatory developments in your jurisdiction which are likely to have a material impact on securitisation transactions in your jurisdiction?

Through recent reforms, many impediments which could hinder the enforcement of monetary claims have been eased. These include the reform of the Civil Procedure Code to expedite enforcement proceedings and the reform of Bankruptcy Code. In the same context, Greek Law 4354/2015 (NPL Law), as in force, established a regulatory framework for servicing and transferring NPLs, to the effect that transfer of NPLs in Greece can now be effected under two different legal regimes, namely securitisation under the Securitisation Law and transfer by virtue of the NPL Law.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

It depends on the kind of receivables, the location of the issuer and the underlying obligors. As a general matter, interest income generated by loan receivables will be considered as income arising from commercial operations and would, *prima facie*, be taxable under Greek law. However, under the terms of a bilateral treaty for the avoidance of double taxation between Greece and the place of establishment of the issuer, the latter will not be subject to tax in Greece in respect of this interest income.

Deferred purchase price and discount are not considered as interest. Generally, as for tax status, deferred purchase price received by the originator is not differentiated from the initial price and therefore, to the extent that profit is made from the transfer of the receivables, such profit is exempted from the income tax according to par. 6 of Article 14 of the Securitisation Law, provided that such profit appears in a special tax free reserve account, which if distributed or capitalised will be subject to tax in accordance with general tax law (par. 9 of Article 14). However, the tax authorities have the discretion to recharacterise a tax status.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

The IAS/IFRS are obligatory in Greece for banks, listed companies and companies issuing debt instruments in public. For such entities, there is a requirement for consolidation of the SPV. Bank of Greece has issued regulations transposing European legislation outlining, broadly speaking, the off-balance-sheet of the securitisation positions of banks in accordance with the Securitisation Law.

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

Generally speaking, sale of receivables outside the ambit of the Securitisation Law may entail stamp duty. However, any transfer of receivables under the Securitisation Law is exempted from any direct or indirect tax, including stamp duty.

9.4 Value Added Taxes. Does your jurisdiction impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

The sale of receivables within the context of the Securitisation Law are exempted from VAT. The Servicing Agreement will be exempted from VAT only if the originator acts as the servicer. If any other entity acts as the servicer, VAT will be applicable.

9.5 Purchaser Liability. If the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

In the context of securitisation transactions, there are no joint tax liabilities between the seller and purchaser. However, the seller and the purchaser are jointly liable to pay to Bank of Greece all monies they collect under the securitised receivables that correspond to the levy of Greek Law 128/1975. This levy is imposed on the interest which is passed by the banks to the obligors of the loans as an add-on to the interest.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

Ownership of the receivables does not of itself amount or give rise to establishment as a purchaser in Greece. Similarly, the authorisations given by the purchaser to the servicer under the Servicing Agreement do not constitute an authorisation such as the one referred to by relevant legislation for the existence of a

permanent establishment in Greece. Accordingly, the income of the purchaser in respect of the receivables will not be subject to taxation (including withholding tax) in Greece.

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.3 above), is that debt relief liable to tax in your jurisdiction?

A case-by-case analysis should be performed. In general, debt relief could be recognised as taxable profit. In addition, debt relief bears stamp duty.

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Yiannis Palassakis is a co-managing partner at Dracopoulos & Vassalakis LP. He has an extensive track record of advising on domestic and international securitisation, structured finance and banking transactions and co-heads the firm's relevant practice. Yiannis is also heavily involved in the privatisation projects of the firm. Prior to joining DVLaw, Yiannis worked with major Greek law firms in similar practice areas as well as in various EU-funded technical assistance, investment support and project finance projects in the Balkans and the former Eastern bloc regions and worked as a special legal advisor for the Hellenic Bank Association, dealing with consumer credit, regulatory and capital markets issues. Yiannis appears as a highly regarded practitioner in the *IFLR 1000*.

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