



The Legal 500 Country Comparative Guides

Greece

PROJECT FINANCE

Contributor

Koutalidis Law Firm



Ioannis D. Kaptanis

Partner | gkaptanis@koutalidis.gr

Dimitris Kalyvas

Senior Associate | dkalyvas@koutalidis.gr

Ioanna Sereti

Associate | isereti@koutalidis.gr

Mari Atzemian

Associate | matzemian@koutalidis.gr

This country-specific Q&A provides an overview of project finance laws and regulations applicable in Greece.

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GREECE PROJECT FINANCE



1. What are the typical ownership structures for project companies in your jurisdiction? Does this vary based on the industry sector?

Project companies in Greece usually operate in the form of non-listed sociétés anonymes (companies limited by shares) under L. 4548/2018 (the Company Law), most commonly as special purpose vehicles (SPVs) established by the sponsors of the project. Sociétés anonymes are limited liability companies with legal personality, which are solely responsible for their debts through their assets.

The industry sector does not usually affect the decision regarding the form under which the project company shall be established. In cases of public-private partnerships (PPPs) governed by L. 3389/2005, the SPV has to be established as a société anonyme. PPPs are long-term contracts between private entities and public bodies, under which SPVs are established with the sole purpose of providing services and/or implementing projects falling within the competence of the public body.

2. Are there any corporate governance laws or accounting practices that foreign investors in a project company should be aware of?

The corporate governance framework in Greece mainly includes L. 4706/2020, the Greek Corporate Governance Code, as well as the decisions issued by the Hellenic Capital Market Commission, which apply in parallel with the provisions of the Company Law and best practices on self-regulation. The above legislation is mandatory only with respect to sociétés anonymes listed with the regulated market (Athens Exchange) or to companies with securities negotiated on the multilateral trading facility, i.e., the Alternative Market of the Athens Exchange; non-listed sociétés anonymes may also choose to comply with the above legislation.

Projects benefiting from non-recourse financing remain off-balance-sheet of the sponsors of the project.

3. If applicable, what forms of credit support from sponsors or host governments are typically provided?

The forms of credit support that the sponsors typically provide to a project company may include: (i) equity injections in the form of share issues or subordinated bond loans, (ii) security rights over various types of assets, including over shares in the project company, (iii) letters of guarantee issued by credit institutions following application by the sponsors, and (iv) in certain cases, corporate guarantees.

Host governments may participate in the financing either in cash or in kind. For example, under the PPPs and upon completion of a project, private partners may have the right to collect fees, such as tolls, from the end-users or direct payments from the State. Payments from the government in the form of financial contribution are also sometimes provided.

4. What types of security interests are available (and suitable) for a project financing in your jurisdiction?

The project company, as the borrower, may grant security over any of the assets owned by it. The sponsors usually provide security over their shares in the project company or their claims under a shareholder loan and, in certain cases, also a corporate guarantee.

Most commonly, the security package includes the following: a pledge/assignment over the claims of the borrower arising from the project documents/contracts (e.g. construction contracts, power purchase agreements or lease agreements), insurance policies, hedging agreements, as well as over bank account deposits. In the case the security is over credit claims, it may also be subject to the financial collateral law 3301/2004. Also, it is common that a pledge/assignment is provided over

claims against the Greek State, in its capacity as the grantor or awarding authority of the project, as well as over VAT refunds.

In certain cases, a pledge/assignment may also be provided over the equipment of the borrower or over negotiable instruments owned by it, such as shares or securities/bonds, or over intellectual property rights (patents, trademarks).

A floating charge may also be provided over the debtor's business receivables or inventory. A mortgage or a pre-notation of mortgage, which can be converted to a full mortgage upon obtaining an enforcement instrument for the secured debt, over real estate properties owned by the project company may also be provided.

5. How are the above security interests perfected?

Under Greek law, encumbrance over immovable property is created by a court order or a notarial deed with regard to mortgage; in both cases, the relevant titles must be registered in the public books of the competent cadastre and/or land registry office.

The possessory or non-possessory pledge is created either by a written private agreement between the parties or a notarial deed governed by legislative decree 17.7/13.08.1923. The possessory pledge is perfected by the delivery of the asset to the pledgee or a third-party custodian. In contrast, the non-possessory pledge (including floating charge) must be registered in the public books of L. 2844/2000 with the competent registry office.

In addition to the above, the pledge over shares or bonds is annotated in the relevant shareholders' or bondholders' register (as the case may be) and on the physical share certificates, while the pledge/assignment over claims and rights must be notified in writing (most commonly by way of service via a court bailiff) to the debtor of the pledged claims and rights.

The guarantee provided by third parties shall be in writing, otherwise, it is null.

6. Please identify how security is enforced (notably the enforcement options available for secured parties) both pre and post insolvency/bankruptcy of the project company?

As a general rule, under Greek law, for the commencement of the pre-insolvency enforcement

procedure over the debtor's properties, the creditor must hold an enforceable title (i.e., final court decision which is not subject to appeal or is provisionally enforceable, payment order, etc.). With respect to the enforcement over real estate property, this mainly involves: i) the attachment of the debtor's property, which freezes its factual and legal status, ii) other creditors' intervention, iii) liquidation of the attached property via electronic auction, a process which is administered online by a certified notary public, and iv) distribution of auction proceeds, which are distributed to all creditors, subject to the priority ranking of their claims.

In particular, the auction proceeds are allocated, after deduction of the enforcement expenses, for the satisfaction of the creditors as follows: up to 25% to the satisfaction of the creditors with general privileges, up to 65% to the creditors with secured privileges, and the rest 10% is allocated to the unsecured creditors. In case of concurrence of creditors with secured and unsecured claims, 90% is allocated to secured creditors, while the remaining 10% is allocated to the unsecured creditors. In case of concurrence of claims with general privileges and unsecured claims, 70% of the proceeds is allocated to the general privileged creditors, and the rest to the unsecured creditors.

In respect to possessory pledges, legislative decree 17.7/13.08.1923 provides for an accelerated and facilitated enforcement process, which entails liquidating the pledged assets by way of a public auction.

As regards non-possessory pledges, such as pledges over receivables, rights and claims over bank account deposits or insurance policies, such security is usually enforced directly by the creditor by setting off, for instance, the amount of cash standing to the credit of the specific pledged bank account, without other prior court proceedings. In that sense, upon the occurrence of an event of default, the pledgee may enforce its claims under the relevant pledge agreements when they become due, collect the entire amount thereunder and apply the amount so collected for the satisfaction in full of the secured liabilities in accordance with the legislative decree 17.7/13.8.1923 and then return (any) remaining balance to the debtor.

With respect to guarantee, where the guarantor has assumed the guarantee as principal debtor, enforcement procedures commence as if the guarantor was the principal debtor.

The above-mentioned ranking of claims and allocation of proceeds applies in case of post-bankruptcy/insolvency proceedings as well, under the new Bankruptcy Law 4738/2020, which, however, introduces certain

exceptions thereto. For example, the suspension of any enforcement procedure which has been initiated by secured creditors is provided, in case a debtor submits an insolvency petition (according to which the sale of its business as an operational unit is anticipated). Furthermore, enforcement procedures are automatically suspended if a debtor applies for an out-of-court settlement of its debts or concludes a restructuring agreement with its creditors, subject to certain exceptions, until such process is terminated or a court decision is issued respectively.

7. What are other important considerations in relation to the security regime in the jurisdiction that secured parties should be aware of?

Security granted under a bond loan structure in accordance with the provisions of Company Law and article 14 of L. 3156/2003 as in force (the Bond Law) (which is the typical structure for project financings), may be obtained before, upon, or after the issuance of the bond loan. Furthermore, under the Bond Law, provision of security in the context of a bond loan and all related agreements thereof, which are also required to be registered with competent registry, are exempt from any direct or indirect tax, including capital gains tax, fee, whether contributory or not, stamp duty, contribution, levy of L. 128/1975, commission, right or other charge in favor of the State or third parties (including registration fees, which are equal to a minimal amount).

8. What key project risks should lenders be aware of in project financings in your jurisdiction? This may include, but may not be limited to, the following risks: force majeure, political risk, currency convertibility risk, regulating or permitting risk, construction/completion risk, supply or feed stock risk or legal and regulatory risk).

There are no internationally uncommon material legal risks to the lenders in a project financing in Greece that may not be adequately addressed in the documentation.

9. Are any governmental / regulatory consents required and are any financing or project documents requirement to be filed with any authority in order to be

admissible in evidence in a court of law, valid or enforceable?

In principle, project financing does not require the provision of governmental or regulatory consents. However, in certain occasions, a consent or registration may be required for the validity, enforceability or creation of rights. In infrastructure and energy financings, the provision of environmental licenses is required for the construction and development of the project.

Also, the perfection of certain security rights requires registration with the competent public registry. Finally, in major public concessions, the designation and/or approval of the finance documents by the Greek State is usually required or advisable, depending on the terms of the relevant concession agreement.

10. Are there any specific foreign exchange, royalties, export restrictions, subsidies, foreign investment, that are relevant for project financings (particularly in the natural resources sectors)?

Law 4887/2022 (the “Development Law”) regulates the provision of a subsidy to specific categories of investments, amongst which the promotion of production of energy through renewables sources. According to the said legislative framework, the Greek State can provide financial assistance to a variety of companies (ranging from small and medium enterprises to large organizations) based on certain criteria and territorial features, in order to cover part of the financing of the investment.

Furthermore, the following are also indicative examples of subsidies used in Greek project financings: (i) the utilization of EU funds provided through Partnership Agreements (“PA”), such as the PA of 2014-2020 (in Greek “ΕΣΠΑ 2014-2020”), under which funds to numerous projects of, among other sectors, transport, infrastructure, environment and sustainable development have already been injected; and (ii) the PA approved by the EU in July 2021 in relation to the first Just Transition Fund Project of the EU Cohesion Policy, which is envisaged to grant a significant amount of funds, among others, to energy efficiency and reduction of greenhouse gas emissions’ projects.

11. Please set out any specific environmental, social and governance

issues that are relevant. For example, are project companies subject to certain ESG laws, reporting requirements or regulations?

It is common in practice that the banks financing the project require compliance with specific EU environmental laws and ESG criteria and also impose relevant reporting requirements on the borrowers, certifying compliance with such standards (e.g. the preparation and submission of an environmental and social plan of the project company).

12. Has any public-private partnership models or laws been enacted in the jurisdiction, and if so, are they specific to certain industry sectors?

The collaboration of public and private sector in the sector of projects is regulated under the provisions of L. 3389/2005, which applies to public-private partnerships (PPPs) that are long-term contracts between private entities and public bodies, under which SPVs are established with the sole purpose of providing services and/or implementing projects falling within the competence of the public body. The said legal framework is not specific to a certain industry sector. However, sectors like national defense or the award of justice are excluded from the scope of the said legal framework, as being under the sole responsibility of the Greek State.

13. Will foreign judgments, arbitration awards and contractual agreements to arbitrate be upheld?

A judgment duly obtained in a court of an EU member state would be enforced by the Courts in Greece without re-examining the merits of the case in accordance with and under the conditions of EU Regulation 1215/2012. A judgment duly obtained, on the basis of an exclusive choice-of-court agreement, in a court of a country which is not an EU member state and has ratified the Hague Convention of 30 June 2005 on Choice of Court Agreements (such as England) will be recognised and enforceable in Greece in accordance with and under the conditions of the Hague Convention. In case a judgment is issued by a court from a non-EU member state, which has not ratified the Hague Convention (for example, the U.S.A.), or in case the judgement was obtained on the basis of a non-exclusive choice-of-court agreement in a country which has ratified the Hague Convention (such as England), then such judgment may be declared

enforceable by the competent court according to the preconditions of article 905 of the Greek Code of Civil Procedure. Greece is also a party to other multilateral and bilateral agreements on the recognition of foreign judgments.

Greece has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927, subject to reservations.

14. Is submission to a foreign jurisdiction and waiver of immunity effective and enforceable?

Generally, submission to a foreign jurisdiction of a Greek project company is effective and enforceable, subject to exceptions. However, L. 4413/2016 on Concession Contracts provides that the courts of the seat of the awarding authority are competent to resolve disputes related to concession agreements falling within the scope of such law or ancillary contracts. Moreover, according to the law applicable to public-private partnerships (PPPs), any dispute arising under or in relation to the interpretation, execution and/or validity of a PPP shall be subject to arbitration procedure.

Under the laws of Greece, the funds, assets, rights and general property of the State, located in Greece, are immune from execution and attachment and any similar process. Any waiver by the Greek State shall not constitute a valid waiver of such immunity or of any immunity from execution or attachment with respect to the premises of the State's diplomatic missions in any jurisdiction which affords immunity thereto or with respect to assets of the State outside Greece, necessary for the proper functioning of the State as a Sovereign power. Private assets of the Greek State would not enjoy immunity.

15. Please identify what you consider to be (a) the key current issues for project financing in your jurisdiction; and (b) any emerging trends or topics which should be considered or focused on by project financing stakeholders.

On the aftermath of the severe economic crisis of 2010, the project activity in Greece has mainly been focused on privatization deals and public and private sector participations (PPPs) in major infrastructure projects, such as the financing of road constructions and the upgrade of existing public owned facilities (e.g. airports

and ports across the country).

Within the following years a regeneration of numerous projects is envisaged. The introduction and public presentation of the National Recovery and Resilience Plan Greece 2.0 ("NRRP") on 31.03.2022 is estimated to bring at the forefront of the private economic interest the promotion of investments supporting green transition and transformation of the Greek economy, with the additional EU non-repayable financial support (grants) amounting to €17.8 billion until year 2026. Also, the first Just Transition Fund Project of the EU Cohesion Policy is expected to inject a significant amount of grants in energy and climate transition investments within the Greek territory.

16. Please identify in your jurisdiction what key legislation or regulations have been implemented (or will / plan to be) for projects in connection with the energy transition?

Law 3864/2006 has introduced the production of energy by Renewable Energy Sources ("RES") and has been amended ever since to accommodate the needs for energy transition.

The recent enactment of laws 4951/2022 and 4964/2022 has upgraded and simplified (thus minimized in time) the licensing framework for the operation of RES (through, among others, the digitalization of many stages of the process), as well as the production and storage of electricity in the Greek territory and the promotion of marine floating photovoltaic parks, a solution that sets the base for the energy interconnection of Greek islands with the mainland.

Key elements of the new legal framework are also the enactment of operational restrictions (in respect of the maximum production capacity of RES) in the injection of produced electricity relating to the efficiency and safety of the regional electricity network, as well as the ability to start the operation of the unit producing renewable energy even if parts of it are still under construction.

17. Please identify if there are any material tax considerations which need to be taken into account for a project financing in your jurisdiction, and if so, how such tax issues can be mitigated.

The issue of withholding of tax that Greek entities are obliged to comply with can be a significant consideration for lenders in Greek project financings as it may impact

projected cash flows. The same applies to delays in VAT refunds. Also, the cost of stamp duties that loan agreements have in Greece -and is mainly under the responsibility of debtors to cover- may pose an additional financial burden. Such issues are in practice mitigated through a contractually agreed provision of a tax gross-up clause, entry into VAT loans and the structuring of the project financing as a bond loan, since such loan form is exempted from stamp duty.

18. What types of funding structures (e.g. debt, equity or alternative financing) are typical for project financing in your jurisdiction. For example, are project bond issuances, Islamic finance and - in the context of mining deals - streams or royalties, seen as attractive (and common) options for stakeholders?

The Greek project financings are in principle based on a combination of debt/equity structure. In practice, the project company will use a blend of the capital provided by the sponsors of the project (either by way of share capital injection or through subordinated shareholder loans) and the funds provided by the lenders (normally the Greek banks or foreign banking institutions) through a bond loan issue.

19. Please explain if there are any regional development banks or export credit agencies, and if so, what is their role in project financing in your jurisdiction and beyond.

Various international and regional development banks, such as the European Investment Bank, the Black Sea Trade and Development Bank, the European Bank for Reconstruction and Development and the International Finance Corporation, have participated during the recent years in project finance transactions across the country.

20. Please explain if there are any important insurance law principles or considerations in connection with any project financing in your jurisdiction.

The bond programme by virtue of which financing is granted usually contains a schedule regulating insurance matters in detail. This schedule is formed following discussions between the project owner and the lenders, with input from the Lenders Insurance Adviser (LIA) that is usually requested by the lenders to be appointed to

advise on all insurance related matters, as well as the insurance advisers/insurance brokers acting for the project owner. Such schedule may indicatively address minimum insurance requirements, the use of insurance proceeds and endorsements that should be attached to the insurance policies (and, if applicable, the reinsurance policies), and the obligations of the insurers/reinsurers towards the lenders (lenders are usually additional insureds).

Claims of the project company under insurance policies are usually pledged/assigned in favour of the lenders of the project company. Accordingly, the insurance policies should allow such pledge/assignment. If the insurance companies (and, if applicable, reinsurance companies) are not seated in Greece, they will need to appoint a process agent in Greece to accept service for the purposes of perfection of the pledge/assignment.

Contributors

Ioannis D. Kaptanis
Partner

gkaptanis@koutalidis.gr



Dimitris Kalyvas
Senior Associate

dkalyvas@koutalidis.gr



Ioanna Sereti
Associate

isereti@koutalidis.gr



Mari Atzemian
Associate

matzemian@koutalidis.gr

