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The International Comparative Legal Guide to:

Securitisation 2016

9th Edition

A practical cross-border insight into securitisation work

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EDITORIAL

Welcome to the ninth 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 a comprehensive 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 34 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, Mark Nicolaides 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.co.uk.

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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 receivable “contract” be deemed to exist as a result of the behaviour of the parties?

- a) As a general rule, the consent of the parties is sufficient for the creation of an obligation. Under article 158 of the Greek Civil Code, no formal procedure is required for the establishment of a contract, unless it is required by law. Requirements for a written contract may exist – among other cases – in the field of regulated financial services and under consumer protection rules.
- b) An invoice may be considered as written evidence of the establishment of a contractual relationship. An invoice that has been accepted (e.g. signed) by the obligor may be used without further documentation for the issuance of an enforceable title.
- c) Where there is no written agreement, it is possible that the creation of such contract and the content of the parties’ obligations be evidenced by other means, such as the behaviour of the parties, subject to the court’s judgment.

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 rates are subject to a limit formed by reference to the ECB interest rate, with different limits being applicable to interest that has been contractually agreed and to default interest.
Regarding banking interest rates, based on the applicable banking regulations, they may be determined without limits and, thus, they may be higher than the interest rate limits applicable to other contractual relationships. It should be noted that the Greek Supreme Court has recognised that the determination of such banking rates may be considered as

abusive for the percentage exceeding the non-banking rates, if no specific criteria justifying the level of such interest rates are determined in advance.

- b) A statutory right to interest on late payments is provided, with respect to commercial transactions, in paragraph Z of Law 4152/2013, which implemented the provisions of Directive 2011/7/EU on combating late payment in commercial transactions. It is noted that, for contracts concluded before the entry into force of the above Law, the provisions of Presidential Decree 166/2003, which was previously in force and had implemented Directive 2000/35/EC, shall be applicable.
- c) Under the applicable consumer protection legislation, there is a right of cancellation of credit contracts, within 14 days from the conclusion of the credit contract or (if later) the receipt of the terms and information by the consumer.
- d) Greek law has been harmonised with the provisions of the European Directives related to consumer protection and, in this context, contains provisions related to – among others – the permissible content of general terms and conditions and any obligations to inform the consumers.

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?

Generally, the government and governmental agencies as recipients of goods and services are subject to particular provisions with respect either to the conclusion (e.g. written contracts, provisions on procurement procedures) or to the execution and enforcement of contracts with private counterparties (e.g. enforcement is possible only against the private property of the public authorities and not against their public property and, generally, property destined to public use).

It is noted that the law on combating late payment in commercial transactions (please see question 1.2 above) is applicable to commercial transactions between undertakings and public authorities (although it does provide for a longer deadline beyond which statutory interest runs compared to commercial transactions between private undertakings).

Regarding the government or governmental agencies as beneficiaries and sellers of receivables, please see question 3.2.

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 the absence of choice by the parties, the applicable law is to be determined in accordance with article 4 of Regulation (EC) 593/2008 of the European Parliament and of the Council “on the law applicable to contractual obligations (Rome I)” which is directly applicable in Greece. In accordance with the above Regulation:

- (a) when all the territorial elements related to the receivables contract are located in Greece (residence of both parties, place of delivery), Greek law will be clearly applicable; or
- (b) if not all the elements of the receivables contract are located in or connected to Greece (residence of one or both parties, place of delivery):
 - (i) the receivables contract shall be governed by the law determined pursuant to the criteria of article 4 par. 1 of the Regulation (designating as applicable the law of the seller’s or service provider’s residence with respect to sale of goods and provision of services); or, if this is not possible,
 - (ii) by the law of the country where the habitual residence of the party required to effect the characteristic performance of the contract is (art. 4 par. 2); or, if this is not possible,
 - (iii) by the law of the country with which the contract is most closely connected.

If, despite the presence of the criteria described above under (i) and (ii), the contract is manifestly more closely connected with a country other than the ones deriving from the application of article 4 par. 1 and 2, the law of that country will be applicable.

It must be noted that different principles apply for some specific categories of contracts, such as consumer and carriage contracts.

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, there is no such reason.

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?

As a principle, in accordance with Regulation 593/2008, the parties may freely choose the applicable law, which shall not necessarily be connected to the jurisdiction(s) in which they are residents or the one that may be linked to the relevant transaction. However, in accordance with the same Regulation, (a) where all other elements

relevant to the situation at the time of the choice are located in a country other than the country the law of which has been chosen, that choice shall not prejudice the application of provisions of the law of that other country from which parties cannot derogate by agreement, and (b) a Greek court may refuse to apply a provision manifestly incompatible with public policy provisions or give effect to overriding mandatory provisions of Greek law.

Additional exceptions may apply for specific types of contractual relationships, such as in the case of consumer contracts, where the consumer must not be deprived from mandatory provisions granting protection applicable in the jurisdiction where the consumer’s habitual residence is located.

2.4 CISG. Is the United Nations Convention on the International Sale of Goods in effect in your jurisdiction?

Yes, the CISG Convention was ratified by law 2532/1997 and entered into force on February 1, 1999.

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)?

There is no such general requirement. In any case, the law governing the receivables should be applicable with respect to the issues referred to in article 14 of Regulation 593/2008 (see the answer to question 3.2) in particular for the accomplishment of the formalities relating to the perfection of the transfer of the receivables.

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)?

Article 14 of Regulation 593/2008 on the assignment of claims provides that the relationship regarding voluntary assignment and contractual subrogation of a claim shall be governed by the law that applies to the contract between assignor (seller in the example’s case) and assignee (purchaser) in accordance with the Regulation and that the law governing the claim itself shall determine its assignability, 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.

Regarding, in particular, the sale of receivables for the purpose of securitisation transactions, law 3156/2003 (the “Securitisation Law”) (which is applicable where the seller is a merchant having his residence or an establishment in Greece and the purchaser is a securitisation special purpose vehicle which may be established in

Greece or abroad) contains specific rules regarding the process of sale and transfer of the receivables, requiring – among other things – a written agreement to be concluded between seller and purchaser and to be recorded in a public register. In accordance with the said law:

- The sale of the claims being transferred for the purposes of securitisation is governed by the provisions of the Greek Civil Code on the sale of goods.
- Unless contrary to the provisions of the Securitisation Law, the transfer of said claims is governed by the provisions of the Greek Civil Code on the assignment of claims.

In this context, the choice of Greek law as applicable to the sale contract is acceptable under the Securitisation Law.

A different legal regime is applicable to the sale of receivables for the purposes of securitisation transactions where the seller is a public entity (article 14 of Law 2801/2000, on the sale of future revenues by the issuance of revenue certificates), where the seller and the purchaser may agree to choose the applicable law regarding the sale contract.

As regards the recognition of the sale against third parties, it can generally be stated that the transfer of the relevant claims may be invoked against the debtor and third parties upon the completion of the formalities required by the law (either those of the Civil Code on normal assignments or those of the securitisation provisions). Regarding specifically recognition against insolvency administrators and other persons involved in a potential insolvency procedure, the Securitisation Law protects the transferred receivables against insolvency proceedings once the publication formality has been effected.

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?

In this example, the receivable is still supposed to be governed by Greek law, and therefore, under Regulation 593/2008, Greek law shall be applicable as to the relevant formalities for the validity of the transfer of the receivable, irrespective of the law chosen by the parties or applicable by default to the sale contract. Therefore, a Greek court would recognise the validity of such transfer if the relevant formalities are met. However, the issue could be more complicated with respect to the effectiveness of the sale against third parties which are outside of Greece, depending on the countries involved.

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 require compliance with the requirements of Greek law on the sale of the receivable.

Another question may be raised as to what evidence will be required by the Greek court regarding the existence and effectiveness of the sale in the obligor's country.

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?

The answer is the same as for question 3.4.

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)?

Insofar as the receivable is governed by Greek law, the transfer of the receivable should comply with the requirements of Greek law, as explained under 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?

The sale and transfer of assets is regulated by the Greek Civil Code. Despite the fact that provisions on sale transactions are tailor made for the sale of goods, they also apply, in principle, in all cases of sales of assets, including receivables. Receivables may be sold and subsequently transferred by means of an assignment pursuant to the provision of article 455 of Greek Civil Code, in which case the obligor's consent is not required.

Receivables are commonly sold and transferred within the framework of the special Securitisation Law as well as other financial structures specially provided in law, such as factoring. A recent development is the enactment of law 4354/2015, which sets the regulatory framework for the transfer of non-performing loans from the banks to other entities. In an attempt to provide credit institutions with new ways to manage such critical portfolios, the law enables banks to sell NPLs to other credit and/or licensed financial institutions.

The agreements typically refer to “sale and transfer” of claims but the terms “transfer” and “assignment” 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?

The main general prerequisite provided in law for the completion of the assignment of claims is the notification of such assignment to the debtor by either the assignee or the assignor; the lack thereof will deprive the assignee of any rights towards the obligor and third parties. The Securitisation Law provides for the registration of the securitisation transaction with the public registry of pledges, by means of which notification is considered to be realised.

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?

Any securities connected with receivables are considered to be ancillary rights and are transferred together with the transfer of such receivables, while registration requirements applicable for the relevant security instrument must also be met. As regards the transfer of promissory notes, this should include delivery and endorsement (promissory notes bearing the name of the beneficiary). As to consumer loans, the consumer should be properly informed if a credit agreement is being transferred to a third party.

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?

The obligor's consent to the sale of the receivables is not a prerequisite of effectiveness, subject to the terms of the receivables agreement. In case of a securitisation transaction, such agreement prevails against any other agreement as to the non-transferability of claims. Notification, as explained above, is required to perfect the assignment and may also serve so as to cut off certain obligor's defences, which may generally be put forward if they were in existence prior to such notification.

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 against the obligor or the seller have commenced? 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?

A special form of notification is not required under general rules but is necessary in the case of securitisations, whereby registration

with the relevant registry of a specific form is needed. Prior to the notification, rights arising from the transfer are not acquired by the purchaser against the obligor. There is no particular notification deadline to be met, however, risks linked to any enforcement measures taken by the creditors of the seller and any insolvency proceedings against the seller are borne by the purchaser at the period prior to notification. Future receivables may be transferred, if defined properly in the relevant agreement.

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)?

The Greek Civil Code provides that a claim cannot be assigned if the seller and the obligor have agreed that such claim is non-assignable. Within the context of this general rule, contractual arrangements limiting the seller's ability to transfer claims against the obligor are acknowledged under Greek law. However, where the wording of a contractual clause limiting assignment refers to assignment of “obligations” of the seller towards the obligor, it would not be deemed to include claims of the seller against the obligor but rather would involve an agreement for the assumption of debt. When interpreting such clause, Greek courts would focus on the entire content of the agreement and on identifying the actual will of the parties thereto as to limit the power of the seller and protect the position of the obligor. The latter principle also applies in cases where the consent of the obligor is set as condition for the transfer of “the agreement” as a whole, in which case, and based also on the remaining contractual terms, the restriction on transferability of claims would be an issue of interpretation. Under Securitisation Law provisions, the transfer agreement on receivables overrides any contractually agreed non-transferability of such claims. As aforementioned, before the notification, the obligor may put forward defences against the seller.

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?

Restrictions are enforceable, subject to the conditions mentioned in question 4.6. The obligor may be awarded damages mainly on the basis of breach of contract.

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?

Claims to be assigned should be duly defined or at least definable, which means that they should be described clearly so as it can be ascertained which claims are transferred to the purchaser and which claims remain with the seller. Identification of claims implies specification of their kind and the extent thereof as well as specification of the obligor. Future receivables must also be definable. A list of the receivables transferred is registered together with the relevant form, pursuant to the formalities of the Securitisation Law.

4.9 Respect for Intent of Parties; Economic Effects on Sale. 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 will a court enquire into the economic characteristics of the transaction? If the latter, what economic characteristics of a sale, if any, might prevent the sale from being perfected? Among other things, to what extent may the seller retain: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; or (d) a right of repurchase/redemption without jeopardising perfection?

Under Greek law, a legal relationship is characterised based on the terms agreed by the parties, the title or terminology used in an agreement not being binding to that effect. Securitisation Law provides explicitly that the transfer of receivables constitutes an outright sale and prohibits any fiduciary transfer. Purchase price may be deferred and a subsequent agreement for the repurchase of transferred receivables is also allowed. The seller may collect and manage receivables but such servicing may also be assigned to a financial or credit institution providing services within the EEA, and, in case of transfer of consumers' obligations, being established in Greece or a third party that was assigned to collect or manage receivables prior to the securitisation thereof or is a guarantor of such receivables. The servicing agreement must be registered with the relevant public registry and amounts collected from the receivables should be deposited in an interest-bearing separate bank account.

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?

In theory such sales are possible, however in practice difficulties might arise in connection with the specification of receivables. Registration requirements are applicable in this case as well.

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 or after the seller's insolvency?

The aforementioned concerns apply in this case as well. Pursuant to part of legal theory and relevant case law, if the seller becomes insolvent prior to the receivables coming into existence and thus, according to the law, the seller loses the power to dispose of its assets, the transfer is not considered to be effected.

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?

Additional formalities needed are the same formalities applied in each case for the creation of the relevant security. In securitisation transactions, ancillary security interests are transferred upon registration with the relevant public books, while relevant amendments on securities *in rem* are effected by means of registering the relevant registration certification of the securitisation agreement.

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?

The provision of article 448 of Greek Civil Code prevents, in principle, the obligor from invoking against the purchaser any setting-off rights the obligor had against the seller, that become due following the notice (or registration pursuant to the Securitisation Law) of a sale. If such claims against the seller are due before the notice of a sale, the obligor, unless such rights are waived, may invoke the set-off rights against the purchaser. Even non-due, at the time of the notice of the sale, counterclaims of the obligor may be set-off, if such claims become due before the actual claim on the receivables does. It should be noted that liability of the assignor against the assignee may arise due to set-off rights of the obligor invoked against the assignee, based on the provisions of articles of 467 and 904 *et seq.* of the Civil Code.

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?

No, it is not.

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 (see question 5.1).

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?

A security interest over movable assets can be granted in the form of a pledge.

Depending on the particular status of the pledge arrangement, on the capacity of the parties and on the context in which the pledge is granted, a different procedure of perfection may be applicable (e.g. a pledge provided in accordance with the provisions of the Greek Civil Code over a claim will have to satisfy the same formalities as the assignment of a claim, including the notification of the pledge by a bailiff to the obligor, a pledge over credit claims under the provisions of law 3301/2004 on financial collateral arrangement if its provisions are applicable to the specific case and chosen by the parties, may be perfected by the conclusion of a written arrangement and the submission of a list of the credit claims to the collateral taker).

It is noted that, in the context of securitisation transactions taking place under Law 3156/2003, article 10 par. 18 of the said Law recognises the entry into of a legal pledge (i.e. constituted by effect of the law) over the transferred receivables and over the deposits constituted by the amounts resulting from the payment receivables, in favour of the bondholders and other beneficiaries of the purchaser company, by the moment of the registration of the transfer of the receivables to the public register.

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 country, will it be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

The perfection of a security over receivables governed by Greek law must be done in accordance with the relevant provisions of Greek law.

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?

Please see the answers to questions 4.11 and 5.3 above.

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 until turned over to the purchaser?

Greek law does not recognise trusts in a general way. Regarding the collection of sold receivables in the context of securitisation transactions, there is a specific mechanism provided for by the Securitisation Law, involving the participation of a third party (e.g. a credit institution) which undertakes such task based on a contractual relationship.

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?

Greek law does not recognise escrow agreements in an official way other than as a contractual practice, i.e. not constituting a security interest protecting the beneficiary of the escrow against third parties. A formal security interest over a bank account can be constituted in the form of a pledge over the cash deposited in the account (if the security is granted to the credit institution) or in the form of a pledge over the account holder’s claim (present or future) arising from such account against the credit institution (see question 5.3). Therefore, the granting of a security over such accounts must be perfected in accordance with Greek law (see 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?

Greek law protects certain categories of claims, such as those arising from salaries, pensions and social security benefits, against enforcement by third parties, which means that enforcement may be operated on any amounts exceeding the amounts corresponding to such exempted claims. It must be noted as well that, in accordance with article 464 of the Greek Civil Code, claims that are protected against attachment cannot be assigned.

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?

It depends on the terms agreed between the parties.

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?

There are no provisions permitting such a stay of action.

The transfer of the receivables is deemed to be perfected either by:

- a) the notification of the assignment to the obligor (in the case of assignment under the provisions of the Greek Civil Code); or
- b) the registration of the transfer in the public register (in the case of securitisation transactions).

In the first case, the transfer will be subject to the provisions of the Greek Bankruptcy Code on the "suspect period" (clawback), if conducted during such period. The same will apply if the purchaser acquires the receivables by way of security (a different regime should be applicable if such security is provided under the provisions of the law on Financial Collateral Arrangements).

In the second case (which is not applicable when the purchaser is only a secured party), law 3156/2003 on securitisation provides that, after the registration of the transfer, such transfer cannot be challenged by any collective measure initiated by the seller's creditors.

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 rights (by means of injunction, stay order or other action)?

Unless the transfer has not been properly perfected or other defects may be identified, and subject to the provisions on 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 insolvency proceeding? 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?

The Greek Bankruptcy Code provides the administrator of the insolvency procedure with the ability to request from the court the revocation of transactions that have taken place during a suspect period, which is defined as the time period between the date of cessation of payments and the declaration of bankruptcy by the court (the date of cessation of payments is set by the court at a time up to two years before the declaration of bankruptcy). The submission of a revocation request is mandatory for the administrator with respect to some kinds of transactions such as gratuitous transactions,

anticipated payments or provision of guarantees for pre-existing claims, whilst it is optional for other kinds of transactions. In cases of transactions entered into with a counterparty acting in bad faith, with an intention to cause damage to the creditors or to favour some of them against others, the relevant period is five years before the declaration of bankruptcy.

The Greek Bankruptcy Code does not make any distinction between related and unrelated parties in the context of the clawback provisions.

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?

There is no specific provision for this purpose.

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) sales of receivables that only come into existence after the commencement of such proceedings?

Please see the answer to 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?

In accordance with the Greek Bankruptcy Code, a debtor shall be declared bankrupt if he cannot fulfil his payment obligations as they fall due in a general and permanent manner (cessation of payments). Any payments made by fraudulent or destructive means are not recognised as a fulfilment of the relevant obligations. In this context, the non-payment of one single debt is not *per se* a sufficient reason for the declaration of bankruptcy and the payment of one single debt is not *per se* sufficient for the avoidance of the declaration of bankruptcy.

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?

Law 3156/2003 is the special securitisation law in place. Under this law, securitisation of claims' scope includes the transfer by means of a sale of trade receivables by the transferor to the acquiring company, which is also combined with the issuance of a bond loan by such acquiring company. The latter takes the form of a special purpose vehicle (SPV). Commonly used as a tool, the Securitisation Law offers benefits as to the tax treatment of the transaction and the protection of the rights of bondholders (protection of securities, aggregation of assets, etc.). All types of trade receivables may be

securitised. The same law also refers to the securitisation of real estate claims. Special provisions apply as regards State receivables.

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?

The special purpose vehicle is required to take the form of a corporation (*société anonyme*) under Greek law and thus comply with the relevant rules governing the operations thereof. The company's capital is divided into shares, its management is entrusted to its Board and properly authorised officers while the company's higher ranked body is the General Meeting of the Shareholders. A corporation of limited liability is highly regulated, especially as to its governance, publicity and accounting requirements. Directors have a fiduciary duty towards the company.

7.3 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?

A similar contractual provision may be accepted under Greek law, subject to non-violation of specific mandatory rules for certain types of transactions, as in the case of consumer protection rules. Where such clause is governed by foreign law, it can be accepted, subject to the conditions and specifics of the case, whereby public order rules should be respected.

7.4 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?

Similarly, a non-petition provision may be effective under Greek law, subject to the above considerations. However, caution should be given to a clause limiting commencement of insolvency proceedings, which are regulated and mainly governed by public order rules.

7.5 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 see the answers to questions 2.1 and 2.3 above. Within the context of enforcement procedures, such contractual provision is not possible due to the fact that relevant regulations are considered to be public order rules.

7.6 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 Board of Directors of a corporation (*société anonyme*) and its members may not, in principle, be dictated to act so as to violate their fiduciary duty towards the corporation, since this will entail liability, including liability pursuant to the Greek Penal Code provisions. In that respect, and given the mandatory nature of such rules, even if the applicable law of the contract is that of another jurisdiction, a similar contractual provision limiting the powers of the Board may be seen as non-valid. Any clause referring to the appointment of independent professional advisors to the Board shall be treated quite differently.

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 other sellers in your jurisdiction?

There is no such specific 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?

As to the servicing agreement, please see the answer to question 4.9 above. As to a replacement servicer, the conditions applicable to the initial servicer must be met. The appearance and supporting of a case before court would entail the presence of a lawyer (except in special cases), thus the seller, in the case of a court hearing, should proceed with the relevant appointment.

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 several restrictions on the collection and processing of personal data, mostly in alignment and compliance with European legislation. Such rules also apply in the case of assignment of receivables. The Securitisation Law provides for certain exemptions from data protection requirements and banking confidentiality so as to facilitate the transfer of claims. Thus, prior approval of the Data Protection Authority or the consent of the obligor is not

required with regards to the processing of data for the purposes of securitisation and banking confidentiality is not applicable in respect of the relations between the seller and the purchaser, as well as between the latter and its creditors, within the context of the securitisation. The seller may share data related to the receivables or the obligors with the purchaser and the same applies for the sharing of data between the purchaser and the bondholders or other persons participating in the transaction. The scope of data protection does not include enterprises.

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?

The purchaser would be required to comply with such rules, being rules of public order. This would entail several restrictions related to termination and rescission of the contract, provision of information as regards assignment of loans, change of interest rates by the banks, etc.

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?

The law does not provide restrictions on the exchange of currency, except where the supervising authority might intervene to examine specific transactions, based on special rules such as tax and anti-money laundering legislation. Note also that due to the recently enacted capital control measures, the transfer of funds and payments made outside the country are still subject to restrictions.

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?

Depending on the nature of the receivables, the location of the obligors and purchaser and whether a double taxation treaty with the country of residence of the purchaser is entered into, withholding tax may be applicable on interest paid. Recharacterisation of

discounts or deferred price as interest is not provided for but, of course, tax authorities have a certain amount of discretion as to how they interpret contractual terms and their tax implications.

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?

For banks or other corporations that are required by law to follow International Accounting Standards, rules related to consolidation of securitisation SPVs and other considerations relevant within such context apply. Banking regulation, transposing also European Directives, includes rules on the treatment of securitisation positions of the banks.

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

The Securitisation Law has exempted the relevant transactions from indirect and direct tax.

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?

VAT is generally applicable in Greece (depending on whether the transaction and the purchaser fall within the scope of such tax), however, this would not apply to securitisation transactions, such as the sale of receivables to the securitisation SPV and the collection thereof by the SPV, which are in any case exempted from taxes.

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?

Within the context of such transactions, tax obligations borne by the seller in connection with the sale are not transferred to the purchaser.

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?

The purchaser's activity in connection with servicing or collection in Greece by itself should not give rise to such interpretations.

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