



GLG

Global Legal Group

The International Comparative Legal Guide to: Securitisation 2011

A practical cross-border insight
into securitisation work

Published by Global Legal Group, with contributions from:

Arendt & Medernach
Ashurst LLP
Baker & McKenzie – CIS, Limited
Bizlink Lawyers & Consultants
Blake Dawson
BORENIUS / Švirinas & partners
Caspi & Co.
Cervantes Sainz
Chapman Tripp
Chiomenti Studio Legale
Cleary Gottlieb Steen & Hamilton LLP
Dave and Girish and Co.
Debarliev, Dameski & Kelesoska attorneys at law
Delphi
Drew & Napier LLC
Estudio Beccar Varela
Eversheds
Fellner Wratzfeld & Partners
FenXun Partners
Freshfields Bruckhaus Deringer LLP
Gárdos Füredi Mosonyi Tomori
J.D. Sellier + Co.
Kim & Chang
Latham & Watkins LLP
Liepa, Skopina/BORENIUS
Loyens & Loeff N.V.
Luiga Mody Hääl Boreníus
M. & P. Bernitsas Law Offices
Maric & Co
Morais Leitão, Galvão Teles, Soares da Silva & Associados
NautaDutilh
Nishimura & Asahi
Pachiu & Associates
Patton, Moreno & Asvat
Pestalozzi Attorneys at Law Ltd
Philip Law Firm
Roschier, Attorneys Ltd.
Schulte Roth & Zabel LLP
SNR Denton
Tonucci & Partners
Torys LLP
Uría Menéndez Abogados, S.L.P.
Weil, Gotshal & Manges

Greece

Athanasia G. Tsene



Alkis G. Mirkos



M. & P. Bernitsas Law Offices

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 behaviour of the parties?

A formal receivables contract is not necessary (whether for enforceability or procedural evidence reasons). An invoice is sufficient, provided that there is evidence of delivery of the goods referred to in the invoice. Where there is an ongoing relationship between a seller and its clients, framework agreements regulating sales of goods or services from time to time or standard terms and conditions of a sale are relatively common.

- 1.2 Consumer Protections.** Do Greek 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?

The EU Directives on consumer credit and consumer protection have been transposed into Greek law and, therefore, a consumer benefits from the protection accorded by these EU Directives.

With regard to interest rates, non-bank interest rates are subject to a legal maximum (adjusted from time to time by reference to the ECB rates) and bank interest rates are subject to transparency and clarity requirements in accordance with the relevant Acts and Decisions of the Bank of Greece (being the regulatory and supervisory authority for credit and financial institutions).

- 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?

Where the government or a government agency is a purchaser of goods or services, the receivables contract must be entered into in accordance with: (a) the regulations transposing into Greek law the EU Directives on public procurement; and (b) any specific provisions that apply to the approval and authorisation of that contract by the government or the government agency (as the case may be).

With regard to the collection of such receivables, any specific procedures that may apply to delivery mechanisms and other formalities prior to payment need to be complied with. Furthermore, enforcement against the government or government agencies is permitted, provided that certain procedural requirements have been met and further provided that the asset over which enforcement is sought does not serve a specific public purpose.

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 Greece that will determine the governing law of the contract?

If the seller and the obligor are both resident in Greece and delivery is agreed to be made in Greece, Greek law will apply. If one of the parties is not resident in Greece or if delivery is agreed to be made outside of Greece, the determination of the governing law (in the absence of a specific choice of law clause in the contract) will be made based on the characteristic performance doctrine, in accordance with EU Regulation 593/2008 on the law applicable to contractual obligations.

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

No, there is not.

- 2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor.** If the seller is resident in Greece but the obligor is not, or if the obligor is resident in Greece 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 Greece 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 that between the seller and the obligor under the receivables contract?

The choice of law clauses in a contract with the above characteristics will be recognised by a Greek court in accordance

with and subject to EU Regulation 593/2008 on the law applicable to contractual obligations. Accordingly, there may be limitations by reference to the scope of application of the Regulation, limitations because the obligor is a consumer or limitations based on international public policy grounds or mandatorily applicable provisions of Greek law (as the case may be).

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

Yes, it is.

3 Choice of Law - Receivables Purchase Agreement

3.1 Base Case. Does Greece'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., Greece's laws or foreign laws)? Are there any exceptions to this rule that would apply to receivables sale transactions?

No such requirement applies under Greek law.

With respect to a securitisation transaction whereby the seller is domiciled in Greece or operates through a permanent establishment in Greece, Law 3156/2003 requires that the agreement for the transfer of the receivables be governed by Greek law and be registered in the public books maintained by the competent pledge register, in order for the transfer to take effect *in rem* as against all parties and benefit from the provisions of Law 3156/2003. This does not prevent the seller and the purchaser from also entering into a sale agreement (regulating their relationship *in personam*) with regard to the receivables sold thereby, which sale agreement can be governed by the law selected by the seller and the purchaser (usually English law); we note that this practice has been followed so far in securitisation transactions in the Greek market.

With respect to a securitisation transaction involving a seller being the government or a government agency, specific provisions need to be complied with, in accordance with Law 2801/2000; however, independently of any transfer requirements, the seller and the purchaser are not prevented from selecting a foreign law to govern the sale agreement for the receivables.

3.2 Freedom to Choose Other Law. If (a) the receivables are governed by one country's laws (whether Greek laws or foreign laws), (b) the seller sells the receivables to a purchaser located in a third country, and (c) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, will a court in Greece give effect to their choice of foreign law? Are there any exceptions to this rule that would apply to receivables sale transactions?

Please refer to our response to question 3.1 above.

3.3 Freedom to Choose Home Country Law. Conversely, if (a) another country's law governs the receivables (e.g., a foreign obligor's country), and (b) the seller and purchaser are resident in Greece, will a court in Greece permit the seller and purchaser to choose the law of Greece to govern the receivables sale? Will a court in Greece permit the seller and purchaser to choose the law of Greece to govern the receivables sale if only one of the seller or the purchaser are resident in Greece? Are there any exceptions to this rule that would apply to receivables sale transactions?

Please refer to our response to question 3.1 above.

3.4 Recognition of Foreign Law Sales. If (a) both the receivables contract and the receivables purchase agreement are governed by the same foreign law, and (b) the requirements for a true sale have been fully met under that foreign law, will a court in Greece recognise that sale as being effective against the seller, the obligors and other third parties (such as creditors or insolvency administrators of the seller and the obligors) without the need to comply with Greece's own sale requirements? Are there any exceptions to this rule?

Please refer to our response to question 3.1 above.

4 Asset Sales

4.1 Sale Methods Generally. In Greece what are the customary methods for a seller to sell receivables to a purchaser?

Receivables can be sold in accordance with the general provisions of the Greek Civil Code on the sale and transfer of receivables.

However, where the seller is domiciled in Greece or operates through a permanent establishment in Greece, it is normally beneficial to the parties to effect the sale and transfer in accordance with Law 3156/2003 on securitisation of receivables, primarily in order to ensure protection in case of insolvency of the seller (or any credit or financial institution acting as servicer for the receivables) and also in order to avoid a need for individual notifications of transfer to the obligors and to also benefit from certain tax exemptions.

For these purposes: (a) the purchaser must be a special purpose company (whether Greek or foreign, usually English), whose sole purpose must consist in the acquisition of receivables for securitisation purposes; (b) the sale must be a true sale (in that it must not operate as a security transfer or a transfer whereby the seller is obliged to repurchase the receivables); and (c) the transaction must be registered in the public books maintained by the pledge register of the place where the seat or permanent establishment of the seller is located.

Furthermore, any securitisation transaction involving obligors being consumers resident in Greece needs to provide for the appointment of a servicer for the monitoring and collection of the receivables and such servicer can be either the seller or a credit or financial institution operating in the EEA. Where the appointment of the servicer is not mandatory (on the basis that no consumers are involved), the parties may still wish to appoint a servicer (usually the originator) for practical reasons. The appointment of a servicer (whether mandatory or not) needs also to be registered in the public books maintained by the pledge register of the place where the seat or permanent establishment of the seller is located.

4.2 Perfection Generally. What formalities are required generally for perfecting (i.e., making enforceable against other creditors of the seller) 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?

Please refer to the registration requirement referred to in our response to question 4.1 above.

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 cheques or other negotiable instruments need to be endorsed to the order of the purchaser and/or physically delivered to the purchaser or to a person acting as custodian for the purchaser, in each case in accordance with the laws and regulations governing the relevant promissory notes, cheques or other instruments.

Security interests created for the receivables are, as a matter of Greek law, accessory rights and follow the receivables. The transfer agreement refers to such security interests and registration for each security interest (e.g. a mortgage for a specific receivable) is easily made at a minimal cost whenever there is a need to enforce that security interest.

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? Does the answer to this question vary if (a) the receivables contract does not prohibit assignment but does not expressly permit assignment; or (b) the receivables contract expressly prohibits assignment? Are there any limitations regarding the purchaser notifying the obligor of the sale of receivables even after the insolvency of the seller or the obligor?

Registration of the transfer of the receivables (please refer to our response to question 4.1 above) is a deemed notification to the relevant obligors. In practice, the seller, the purchaser or the servicer (as the case may be) includes a reference to the transfer in any communication to the obligors (for instance, statement of account, default notice or confirmation of payment); this is primarily for transparency reasons and failure to include such a reference in any communication does not of itself affect the title of the purchaser in the receivables.

Law 3156/2003 explicitly provides that the transfer of the receivables by way of securitisation in accordance with its provisions is fully effective even if the underlying contract includes non-assignability or non-transferability provisions.

Law 3156/2003 also explicitly provides that the transfer cannot be challenged on the grounds of insolvency of the seller and, therefore, if the seller is declared insolvent after the transfer, the purchaser is not exposed to claw-back risks.

A similar protection applies in respect of any appointed servicer, in that any collections held by the servicer must be paid by it into a segregated bank account maintained with itself (if the servicer is a credit institution) or with a credit institution (if the servicer is not a credit institution) and any collections made to the servicer or any

security interests or other assets delivered to the servicer in its capacity as servicer do not form part of its insolvency estate and are not subject to seizure or attachment by its creditors or set-off rights for counterclaims that the servicer may have against the purchaser or the seller outside the scope of the securitisation transaction.

Please also refer to our response to question 4.9 below.

4.5 Restrictions on Assignment; Liability to Obligor. Are restrictions in receivables contracts prohibiting sale or assignment generally enforceable in Greece? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If Greece recognises prohibitions on sale or assignment 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 on any other basis?

As discussed in our response to question 4.4 above, the transfer of the receivables to the purchaser will be fully effective even if the contract includes a non-assignability or non-transferability clause.

As between the seller and an obligor, it cannot be excluded that an obligor having suffered a damage as a result of a breach of such a clause and being able to evidence that: (a) it has suffered that loss; and (b) the transfer is an adequate cause for that loss, may be able to sue the seller for damages.

4.6 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?

The information included in the transfer agreement for the receivables (see our answer to question 4.1 above) must be sufficient in the circumstances to describe each receivable so transferred.

The obligor's name and address, the invoice number and date, the underlying contract (if any) and any relevant security interests need to be set out in the transfer agreement (usually in an annex to the transfer agreement), but normally there is no need to also set out due dates or other details, as long as the description already included does not result in any uncertainty as to the receivables purported to be transferred.

4.7 Respect for Intent of Parties; Economic Effects on Sale. If the parties denominate their transaction as a sale and state their intent that it be a sale will this 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; and/or (c) control of collections of receivables without jeopardising perfection?

Please refer to our response to question 4.1 with regard to true sale considerations and registration requirements.

Where the seller retains credit risk, this may affect the true sale nature of the transaction, unless any such retention of credit risk is within the limits that apply under the IFRS or (where the seller is a credit or financial institution) under the Acts and Decisions of the Bank of Greece on the qualification of a transaction as a

securitisation transaction and the regulatory capital treatment of the transaction. The same parameters are relevant to any credit enhancement offered by the seller.

The seller may act as servicer (please refer to our response to question 4.1), provided that, for true sale and tax reasons, its powers and duties do not extend beyond monitoring and collection. In this regard there is already standard market practice regarding the function of the servicer (including with regard to the standard provisions included in a servicing agreement).

4.8 Continuous Sales of Receivables. Can the seller agree in an enforceable manner (at least prior to its insolvency) to continuous sales of receivables (i.e., sales of receivables as and when they arise)?

The seller and the purchaser can agree to continuous sales of receivables, provided that each time that a specific pool of receivables is transferred, the registration requirements are complied with (please refer to our response to question 4.1 above).

4.9 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)? In that regard, is there a distinction between receivables that arise prior to or after the seller's insolvency?

Please refer to our response to question 4.8, which applies *mutatis mutandis*. This option requires particular attention as to its structuring and implementation based on the way in which the receivables operate on a case-by-case basis. Receivables of this type could be future receivables that can be adequately described to arise from an existing and specified commercial relationship or they could be receivables that could not be described with adequate certainty or could arise under a relationship that does not exist yet and is uncertain. In the latter case, the transaction might not necessarily be insolvency-proof.

4.10 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?

Please refer to our answer to question 4.6 above.

5 Security Issues

5.1 Back-up Security. Is it customary in Greece to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that the sale is deemed by a court not to have been perfected?

To the best of our knowledge, there is no such market precedent.

5.2 Seller Security. If so, what are the formalities for the seller granting a security interest in receivables and related security under the laws of Greece, and for such security interest to be perfected?

These formalities depend on the type of the security interest: (a)

with regard to real property, mortgage or pre-notation of mortgage; (b) with regard to movable assets, pledge (whether possessory or non-possessory); (c) with regard to shares or other securities, pledge; (d) with regard to bank accounts, pledges; and (e) with regard to rights and claims, pledges or security assignments.

Failure to comply with the applicable formalities (which are detailed and cannot be set out in full in this response) may affect the validity, binding effect and enforceability of the relevant security interest. Any party wishing to create security should seek legal advice in order to ensure that the security interest will be duly created and perfected.

5.3 Purchaser Security. What are the formalities for the purchaser granting a security interest in receivables and related security under the laws of Greece, and for such security interest to be perfected?

Law 3156/2003 explicitly provides that the securitisation creditors acquire a security interest over the receivables and all related security interests granted by the obligors for the receivables and such security interest in favour of the securitisation creditors is created and perfected upon registration of the transfer agreement for the receivables (please refer to our response to question 4.1 above).

5.4 Recognition. If the purchaser grants a security interest in the receivables under the laws of the purchaser's country or a third country, and that security interest is valid and perfected under the laws of that other country, will it be treated as valid and perfected in Greece or must additional steps be taken in Greece?

No additional steps are required, provided that registration of the transfer agreement has been effected (please refer to our response to question 5.3 above).

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

No additional requirements apply to mortgage loans or consumer loans (please refer to our response to question 4.1 above).

With regard to promissory notes, cheques or other negotiable instruments and with regard to security interests securing the receivables, please refer to our responses to questions 4.1 and 4.3 above.

5.6 Trusts. Does Greece 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?

Law 3156/2003 already provides for a satisfactory mechanism. Please refer to our responses to questions 4.1 and 4.4 above.

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

A bank account maintained by the servicer for the collections will

be protected by Law 3156/2003 (please refer to our response to question 4.4 above).

As a matter of Greek standard market practice, the servicer is obliged under the servicing agreement to effect periodical transfers of any amount standing to the credit of that bank account to another account maintained with an acceptable bank (usually in the UK) and operated by the securitisation trustee, in order for the securitisation trustee to be able to distribute the proceeds in accordance with the securitisation documents.

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 Greek insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (“automatic stay”)? 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?*

The consequences of insolvency of the purchaser with respect to these matters will depend on the law governing the insolvency matters of the purchaser. As a matter of Greek standard market practice, all these functions are performed by the securitisation trustee in accordance with the securitisation documents.

6.2 Insolvency Official’s Powers. *If there is no automatic stay, 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)?*

Please refer to our response to question 6.1 above.

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 Greece for (a) transactions between unrelated parties and (b) transactions between related parties?*

Under the Greek Bankruptcy Code, the suspect period is a period commencing on the date of cessation of payments and ending on the date of declaration of bankruptcy. The date of cessation of payments is set by the court (on the basis of evidence presented before the court) not earlier than two years prior to the date of declaration of bankruptcy. In certain cases, clawback can exceptionally affect a period up to five years prior to the date of declaration of bankruptcy.

However, a securitisation transaction benefits from the specific provisions of Law 3156/2003 and, therefore, the sale and transfer cannot be successfully challenged if the seller is declared bankrupt at any point after the sale and transfer. There is case law in the context of similar protective provisions in other transactions (other than securitisation) to suggest that, where the counterparty of the insolvent debtor is not acting in good faith it cannot benefit from the protection. Please refer to our responses to questions 4.1 and 4.9 above.

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?*

Please refer to our responses to questions 4.1, 4.3 and 6.3 above.

6.5 Effect of Proceedings on Future Receivables. *What is the effect of the initiation of insolvency proceedings on (a) sales of receivables that have not yet occurred or (b) on sales of receivables that have not yet come into existence?*

Where registration of a transfer agreement: (a) has not yet been effected for any receivables; or (b) has been effected but the receivables in question are not identifiable based on the description included in the registered transfer agreement, these receivables might be treated as forming part of the seller’s insolvency estate.

7 Special Rules

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

Please refer to our responses in the questions starting from question 4.1 above.

7.2 Securitisation Entities. *Does Greece 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?*

Yes. Please refer to our response to question 4.1 above.

Where the special purpose company is owned, controlled or managed by the seller, this may have adverse consequences for a true sale, accounting or regulatory capital treatment.

7.3 Non-Recourse Clause. *Will a court in Greece give effect to a contractual provision (even if the contract’s governing law is the law of another country) limiting the recourse of parties to available funds?*

In principle, yes (if there are no grounds for non-effectiveness on the basis of EU Regulation nr. 593/2008 on the law applicable to contractual obligations).

7.4 Non-Petition Clause. *Will a court in Greece give effect to a contractual provision (even if the contract’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?*

Please refer to our response to question 7.3 above.

- 7.5 **Independent Director.** Will a court in Greece give effect to a contractual provision (even if the contract'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?

Please refer to our responses to questions 7.2 and 7.3 above.

8 Regulatory Issues

- 8.1 **Required Authorisations, etc.** Assuming that the purchaser does no other business in Greece, 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 Greece? Does the answer to the preceding question change if the purchaser does business with other sellers in Greece?

Provided that the requirements of Law 3156/2003 are complied with (please refer to our response to question 4.1 above), the purchaser will not be required to obtain a licence or be subject to regulation as a financial institution.

- 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?

Where the seller acts as servicer or any credit or financial institution acts as servicer: (a) a certificate of registration of the transfer agreement and of the appointment of the servicer; and (b) a power of attorney granted by the purchaser, will be used by the servicer (including before a court or other authority) for enforcement and collection purposes.

- 8.3 **Data Protection.** Does Greece 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?

Law 3156/2003 explicitly allows the processing of personal data of obligors without any prior consent being required, provided that such processing is made to the extent necessary for monitoring and collection purposes.

- 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 Greece? Briefly, what is required?

Please refer to our response to question 4.3 above.

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

No, it does not.

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 Greece? 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?

Assuming that the obligors are domiciled in Greece or acting through a permanent establishment in Greece, the answer to this question depends on the tax residence of the purchaser, on the nature of the receivables and on the existence or not of a double taxation treaty between Greece and the country of tax residence of the purchaser.

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

In respect of a seller or a purchaser being a tax resident in Greece or operating through a permanent establishment in Greece, there are specific accounting requirements under Greek law to be complied with by the seller or the purchaser (as the case may be).

- 9.3 **Stamp Duty, etc.** Does Greece impose stamp duty or other documentary taxes on sales of receivables?

The sale of receivables under Law 3156/2003 are not subject to stamp duty or other documentary taxes.

- 9.4 **Value Added Taxes.** Does Greece 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 needs to be examined on a case-by-case basis, by reference to the nature of the receivables, the jurisdiction of the purchaser and the nature of each amount that could be subject to VAT.

- 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?

Please refer to our response to question 9.4 above.

- 9.6 **Doing Business.** Assuming that the purchaser conducts no other business in Greece, 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 Greece?

The liability of the purchaser to Greek tax would be based either on their tax residence in Greece or them having a permanent establishment in Greece. For these purposes, it is important to ensure that the way in which any servicing arrangements operate does not present any such risks for the purchaser.

**Athanasia G. Tsene**

M. & P. Bernitsas Law Offices
Lykavittou 5
106 72 Athens
Greece

Tel: +30 210 361 5395
Fax: +30 210 364 0805
Email: athanasia.tsene@bernitsaslawoffices.gr
URL: www.bernitsaslawoffices.eu

Athanasia joined the firm in 2001 and is head of the Banking & Finance Group. She has vast experience in advising on international financial transactions, including the feasibility, structuring and execution of securitisation transactions in the private sector. Athanasia has been heavily involved in the consultation phase prior to the passing of the new securitisation law and has also been involved in securitisation transactions in Greece both before and after the passing of the new Greek legislation. She advises extensively on derivatives and collateral arrangements as well as on regulatory issues in the banking and finance sector. Athanasia is experienced in structuring all types of transaction and drafting documentation in this sector. Prior to joining the firm, she worked with the Commercial Bank of Greece in house.

**Alkis G. Mirkos**

M. & P. Bernitsas Law Offices
Lykavittou 5
106 72 Athens
Greece

Tel: +30 210 361 5395
Fax: +30 210 364 0805
Email: alkis.mirkos@bernitsaslawoffices.gr
URL: www.bernitsaslawoffices.eu

Alkis is an associate with the firm which he joined the firm in 2002. He has considerable experience in acting in lending transactions, in particular the drafting and review of facility and security documents, as well as securitisation transactions, including the review of agreements and prospectuses, and OTC derivatives. In the area of Project Finance, Alkis has been involved in the drafting of construction and lending agreements and security documentation. His Company & Commercial practice involves the establishment of companies and advising on issues arising in the conduct of their day-to-day business, as well as drafting commercial agreements. Alkis also advises on data protection, with a focus on the provision of electronic banking and financial services.

M. & P. Bernitsas Law Offices

M. & P. Bernitsas Law Offices is one of the leading commercial law firms in Greece. It has long been a proponent of the provision of an international level of service, while maintaining a strict ethical standard, which has earned it a reputation both locally and abroad as one of the foremost providers of services in Greece in all sectors of corporate law.

Since the firm was founded in 1946, we have consistently been at the forefront of shaping Greece's legal and regulatory framework and have acted in many pioneer transactions. We strive to provide our clients with practical, in-depth advice and assist them in achieving their commercial aims within an often volatile and difficult legal environment. We pride ourselves in our team-orientated philosophy which allows us to provide a seamless service throughout our areas of practice.

The bulk of the firm's practice concentrates on complex domestic and cross-border transactions. We have established long-term relationships with leading law firms all over the world and act together with many of these firms regularly in providing a seamless international service to our clients. Our lawyers are all foreign language speakers and have developed a profound knowledge of the areas in which they specialise. With 50 attorneys working with us, we are one of the largest firms in Greece.

M. & P. Bernitsas Law Offices was named Balkan Law Firm of the Year at the FT and mergermarket European M&A Awards, 2009 and IFLR Law Firm Of The Year: Greece for 2010 and has received the Chambers Award for Excellence, Greece, 2010.

5, Lykavittou Street • GR-106 72 Athens • tel. switchboard: (+30) 210 361 5395 • fax: (+30) 210 364 0805 • e-mail: bernitsas@bernitsaslawoffices.gr • website: <http://www.bernitsaslawoffices.eu>

The International Comparative Legal Guide to: Securitisation 2011

Other titles in the ICLG series include:

- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Gas Regulation
- International Arbitration
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Product Liability
- Public Procurement
- Real Estate
- Telecommunication Laws and Regulations

To order a copy of a publication, please contact:

Global Legal Group
59 Tanner Street
London SE1 3PL
United Kingdom
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk