

SCHEDULE 2

GREECE

COUNTRY ANALYSIS

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1. General

1.1 Pledge – General Characteristics

- Under general rules of the Greek Civil Code, constitution of a pledge on any movable asset requires a written agreement between the pledgor and pledgee and delivery of possession of the asset to the pledgee or, subject to consent of both pledgor and pledgee, to a third party.
- The pledge agreement must be concluded either by notarial deed or by private agreement in writing having date certain, i.e., stamped by the Greek administration (e.g., tax authorities).
- A valid pledge agreement must define precisely the claim secured and the subject matter of the pledge so the securities must be current and precisely identified. The claim secured may be future or conditional, provided it is ascertained or ascertainable. The pledge will take effect from its constitution even if it is constituted to secure a future or conditional claim. By virtue of the principle of speciality, a pledge over a group of movable assets is not possible: only individual components of the group may be the subject matter of the pledge.
- There exists the possibility for the replacement of pledged securities by other securities during the course of the pledge. The pledgor must send a standard form of notice of modification of the initial pledge and the pledgee must simultaneously send to the system his written consent to the change.
- By express provision of the Law 2198/1994 article 11, the pledging of securities is exempt from stamp duty.

1.2 Transfer of Title – General Characteristics

- There is no statutory provision with regard to the transfer of title. However, a debtor may grant the equivalent of security in the form of a fiduciary transfer in relation to moveables.
- A fiduciary transfer is treated as a transfer of ownership in order to secure the transferor's obligations under the underlying agreement. The transferee will be entitled to use the collateral as though he were absolute owner subject obviously to the terms of the agreement which require the transferee to return equivalent collateral upon termination of the underlying agreement.
- The transfer of title arrangement may be recharacterised. The level of recharacterisation risk is difficult to measure.
- In order for the creditor to have effective protection under a fiduciary transfer the creditor must acquire possession of the assets. This may require an action against the debtor claiming delivery or recovery of possession.

If the transferor defaults, then the transferee may use or dispose of the assets as owner. On the other hand if the transferee were to become insolvent, the assets would be available to creditors of the transferee to the extent that they are still held by the transferee.

- If the agreement has been recharacterised as a pledge, then the arrangement could be invalid unless the formalities for creation and perfection of a pledge have been complied with. If the transfer is invalid the transferee must return the collateral, with no benefit of set-off, and must prove its claims against the insolvent as an unsecured creditor.
- Contractual set-off is not enforceable on insolvency.
- Close-out netting is in principle permitted by law. However when payments are received during the suspect period by a person who was aware that the debtor was insolvent and unable to continue to pay its debts, then those payments may be regarded as preferential payments and would be voidable upon commencement of bankruptcy proceedings. Third party claims will not disrupt set-off and netting between solvent counterparties.

2.1 Private International Law and Domestic Law Aspects of Collateral

Validity of the Contract/Attachment

Greek private international law:

- “Creation” of a security interest under Greek law will not be distinguished from its “perfection”. As far as the creation refers to the contractual elements of a security agreement between the parties, creation would be governed by the law governing the relevant contract which is normally the law chosen by the parties.

Greek domestic law:

- The following requirements will be relevant formalities necessary to ensure the validity of a pledge: a written pledge agreement with description of the collateral; notarisation of the agreement or official certification of the date of the document by a public authority, notary or court’s bailiff and the delivery of the property to the pledgee or a third party custodian for the pledgee.

Perfection:

Greek private international law:

- As far as perfection relates to proprietary aspects of the security agreement between two parties and the rights of third parties regarding assets subject to the pledge, perfection will be governed by the law of the place where the relevant collateral is located.

Greek domestic law:

- See validity aspects for the Greek domestic law.

Enforcement:

Greek domestic law:

- The realisation of the pledge in the event of the counterparty's default, where no bankruptcy proceedings are started, requires the following preliminary formalities: prior notice to the counterparty; minimum period of time to be respected before any further action (24 hours following maturity of the obligation secured); authorisation from the Commercial Court (according to the general provisions of Greek Property Law Article 1237 GCC and relevant provisions of the Greek Code of Civil Procedure, the realisation of collateral subject to a pledge always requires a court order).
- Regarding the sale of the collateral, the forced sale procedure which the Bank of Greece applies must to the extent possible take into account the interests of the debtor. The enforcement of the pledge is done by public auction by special auction sale procedures and this entails a delay due to the applicable formalities.

Alternatively a creditor may institute proceedings for compulsory execution as an unsecured creditor although in this case the creditor's rights are subordinated to those of other secured creditors or rank equally with the rights of other unsecured creditors.

- If the pledged items are listed on the Stock Exchange the sales will take place on the exchange.
- Agreements entered into by the parties prior to maturity of the secured claim and providing that in the event of default ownership of the pledged assets will be transferred to the secured creditor will be void, as well as any agreement releasing the secured creditor from the mandatory auction sale procedure.

Insolvency:

Greek domestic law:

- Pursuant to article 11.2 of Law 2548/1997 insolvency proceedings relating to the pledgor do not freeze the enforcement of a pledge.

3. Miscellaneous

3.1 Cross-border transactions in multi-tiered holding systems

The lex loci of fungible securities held through an account in a clearing system would be the place where the securities are physically held.

If securities assets are held by a third party bank or custodian the security interest must be notified to the third party.

Under Greek law, a depository of securities does not have permission to dispose of them unless he has express written consent from the depositor(s) - article 830 Greek Civil Codes regarding the establishment of any specific account or registration of the pledge. Under article 6.9 of Law 2198/1994 setting up the Greek SSS, the pledging of securities in the system is completed by an entry of the equivalent amount on a special pledge account held by the system or with the participant.

3.2. Implementation of the Settlement Finality Directive

The implementation of the Directive was done under the supervision of the Ministry of National Economy. The Ministry had organised a committee to oversee the implementation process with members drawn from the central bank, government ministries and the financial and legal communities. The first draft of the implementation favoured a broad interpretation of the 9(2).