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Real Estate: Legal Framework

The Real estate market is divided in two main categories:

- The primary market, which includes construction of buildings with all the related activities of allocating a building plot, investment yield and project management

- The secondary market, which includes the transfer of real estate, leasing and property management

The Greek government recently introduced reforms on real estate development and related investment opportunities with respect to both the aforementioned categories. It has also released drafts of land planning legislation in order to simplify the country's very complicated current zoning regime.

Legislation recently enacted as well as bills recently introduced, unmistakably evidence the State's clear intention to invite private investors and innovative businessmen to participate actively in plans for public property development, infrastructural growth and furthermore, to unleash the substantial growth potential for the very significant tourism market.

Indeed, in the 1990's, around 70 percent of all business assets were controlled by the state including an important part of the tourism sector.

Allow me to begin my brief introduction to the Greek real estate legislative framework by discussing a development tool which was initially successfully implemented in Great Britain, and later on was implemented other European Countries.

I am referring to Law 3389/2005 which was enacted for the implementation of Public - Private Partnerships in Greece.

Law 3389/2005:

- Defines Public Entities that can implement partnership contracts with Private Entities

- Defines minimum content of a PPP contract (obligations and rights of both parties)

- Regulates specific issues (e.g. financing, participation of public entities in partnerships, payment method, grant of permits).

- Defines legal issues related to these partnerships (e.g. transfer of claims, taxation and arbitration)

- Abolishes the need for ratification of PPP contracts by Parliament

- Deals efficiently with the issue of risk allocation (the private sector assumes a substantial_part of the risks associated with financing and construction).

Collaboration between the public entities awarding the projects, bank institutions financing the projects, the developing secondary market and private contractors that undertake the realisation of the projects and their maintenance, speed up the completion of public projects and contribute to the decrease of public debt since the cost is divided in many small instalments.

Towards the same end as PPP's, another reform recently introduced to Greece with Law 3581/2007 in order to enhance public infrastructure development is the sale & leaseback investment tool, which is rapidly spreading throughout Europe.

Until recently, Greek legislation restricted the State's exploitation of its real estate assets (estimated value of existing state-owned buildings: 2 billion euros approximately).

In practise, it was difficult for the State, from a legal standpoint, to engage in the construction of new buildings on state land or to renovate state owned buildings, due to a lack of administrative procedures, funds and/or know-how.

Consequently, Greece was unable to meet the increased demand for more space required by expanding government services.

The new sale & leaseback law allows the State to transfer, build or renovate property it owns by cooperating with the private sector.

Under a typical sale-and-leaseback agreement the state sells the building it occupies and then leases it back from the buyer. The advantage is that the sale frees up capital for investment elsewhere, or to reduce State debt, while allowing the public entity to continue to occupy the same property.

More specifically, based on this new legislation, the state may sell its property to private investors and then lease it back for a fee over a period of up to 99 years.

Such sale & lease back agreements give the government the option to either reclaim its property upon expiration of the contract period, or alternatively renew the lease.

Sale & leaseback constitutes a smart economic decision for private investors not only because of the tax incentives offered but also because of the traditional advantages that this economic tool embodies, namely:

- The lease typically represents a long term and stable income stream.
- The property is purchased with a tenant wishing to be in this specific location and utilizing this specific property.
- Properly structured leases can be inflation hedges.

Sale & leaseback agreements are intended to work in conjunction with Private Public Partnerships in order to build, rebuild, fund repairs and assure proper maintenance of public property.

Finally, under E.U. guidelines, these tools are expected to be used exclusively to reduce accumulated public debt and are also expected to increase state owned real estate companies like the Hellenic Public Real Estate Corporation and Tourism Development Company business potential.

Investment Incentives Law is an economic tool that applies to all private investments in Greece. The Law – amongst others - favors business activities in the supply chain, tourism and real estate and industrial development sectors.

An interesting opportunity for private investment in the field of the supply chain involves the construction of Freight Centres.

According to the legislation in force, the funding of freight centres can be private, public or mixed. Procedures for the construction of two freight centres in Attica and Thessaloniki have commenced and although they are designed to be of a moderate size, they are expected to attract great interest due to their strategic position. From a geographic perspective, Greek freight centres offer Europe easy access to the Middle East and North East Africa.

Some refer to the Greek freight centres as the Greek “miracle” that will make Greece the logistics platform for the Balkans and Eastern Europe and compare it to the Dutch “miracle” since the Netherlands is the logistics platform of Western Europe.

Furthermore, in today’s highly competitive environment, where product prices play a determinative role, Greece is moving towards satisfying enterprises need for cost reduction by providing freight centres. In the process, private construction companies, logistics companies and transportation companies will profit.

For development to occur in a country, specific, clear and flexible legal framework has to be first enacted and secondly enforced.

Greece has a very complicated spatial and environmental planning system based on Law 2742/19999 which provides that spatial planning is the supreme form of planning and that all other forms of planning must be in conformity with it. The many complicated and difficult to master, let alone implement - related plans and studies are shown in the slide now on screen, so as to give you an idea of the current state of affairs.

The integration of the environmental dimension into regional policies constitutes a dominant concern of the current EU strategy for sustainable development. Therefore, in an effort to simplify its planning system and comply with current environmental policy and in order to unleash its growth potential, Greece has introduced necessary reform proposals that are now the subject of intense discussion and which concern new Framework Special Urban Planning legislation for Industrial Development, Tourism Development and Renewable Energy Sources Development.

As I am here today to talk to you about the Real Estate Market and therefore about Industrial and Tourism Development from a real estate perspective, I will leave the very interesting subject of renewable energy sources for another time.

The reforms under consideration serve Greece's intention to promote a system that will invite private investment by creating a comprehensive, flexible environment. The intention is to amend legislation that is frequently counterproductive, adding layers of unnecessary bureaucracy rather than facilitating development activity.

The Urban Zoning Plan introduced this year, in conjunction with the relevant Joint Ministerial Decision under discussion since May 2007, favours industrial development by diverting the construction industrial facilities to dedicated industrial areas.

Industrial areas are to function under a uniform legal framework and three new classifications for industrial areas are proposed, namely those in need of restructuring and improvement, those that will host single large industrial units and those with an intermediate degree of organization.

The new legislative proposals for reform in the industrial sector facilitate investment initiatives by introducing the proper territorial regulations, by setting out sufficient and suitable areas to house new facilities and allow for modernization of existing facilities.

Moreover, complimentary reforms concerning zones with specially regulated urban planning (PERPO) are under intense discussion.

PERPO regulates the zoning of regions whose planning is initiated by the private sector.

When the government, local authorities, environmentalists and the Construction Associations that hold considerable assets finally come to a viable agreement with respect to mapping, planning and land use, the real estate development of public property -amounting to more than 100.000 estates will finally take off and the State's general scheme to establish Greece as a real estate private investment destination in order to develop publicly owned real estate will be met.

Greece's coordinated effort to successfully develop the country's tourism and organize efficiently public property by introducing innovative solutions of tourism real estate investment is clearly illustrated by the government's recent introduction of a tourism zoning plan and the related Common Ministerial Decision under discussion since May 2007, the 2006 amendment of the Investment Incentives Law and the Development Programme Introduced by the Ministry of Tourism for the period 2007 - 2013.

The tourism zoning plan sets guidelines for the sector's development for the period 2007 to 2022 and includes provisions for the construction of integrated residential and resort communities, condo hotels and holiday homes (POTA).

I am aware that, here in the States, you are quite familiar with the concept of Condo Hotels that are operated by companies like Starwood, Four Seasons, Hyatt, Hilton and Ritz Carlton, in places like the Caribbean, Las Vegas and Chicago. Therefore, I am not going to elaborate on this concept.

Suffice it to say that Condo owners – in the same way as here - will be able to choose whether they prefer to use their property for part of the year and then rent it out as hotel accommodations the rest of the year or whether they prefer to purchase a condo for exclusive use.

Where the owners rent their condo, the condo is listed on the hotel's rental programme for the period it is not used by the owner and the owner receives part of the revenue generated, while the condo hotel management takes care of renting, cleaning and maintaining the condo.

The Greek zoning plan and the Joint Ministerial Decision under discussion aim to promote sustainable development of the tourism market. These acts divide the country into 10 categories, which include amongst other already developed tourist areas, developing areas, metropolitan areas, protected habitats, archaeological sites and traditional settlements.

The islands in particular are divided into four categories according to their potential for development:

Division 1: includes 44 small islands where the plan provides for the construction of small hotels and generally limits the creation of new hotels.

Division 2: includes Zakynthos, Mylos and 32 other islands are considered developing tourist destinations and the government's effort is for the economies of these islands not to become totally dependent on tourism.

Division 3: includes Santorini, Kerkyra, Crete, Mykonos, Kos, Rhodes etc., and basically includes islands that already enjoy substantial tourism and which consequently face environmental dangers, thus mandating a restraint on their development.

Division 4: includes non-inhabited isles. According to the plan, constructions will not take up more than 2 percent the area of an isle tourism development is allowed.

Finally, an issue of dispute between the government and hoteliers is that, condo hotels must be built on a plot larger than 15 acres if outside the city and only 70% of the properties in condo hotels can be sold. In the event that such hotels include a golf course or a spa (POTA), this percentage is further decreased to 30%. The remaining percentage must function as a traditional hotel.

The hoteliers believe in order for the plan to be successful and functional, the aforementioned percentages must be increased. Of course, we should bear in mind that, in the States – unlike Europe -where such percentages are actually higher, vast, undeveloped areas are available.

Regarding developing areas, the zoning plan and the subsequent Joint Ministerial Decision that is currently under consideration aim to cope with overdevelopment and introduce alternative forms of tourism.

Alternative forms of tourism to be reformed include ski resorts, eco tourism, religious tourism, golf tourism, conference centres, spas, sport tourism, agro tourism, mountain/climbing tourism and cultural tourism.

Again, what Greece aims at is the collaboration of the public and private sector in order to make the most of its natural resources while respecting environmental concerns and avoiding overdevelopment.

As a matter of fact, this month, the National Council for Spatial Planning and Sustainable Development is expected to issue its opinion on the National Planning Framework. When enacted, all related business activities will comply with rules with which they will be able to easily be familiarized with, before embarking in new entrepreneurial ventures.

Another area that is experiencing growth and great interest for private investment in Greece is the area of Trade centres/Malls. By the end of 2008, it is expected that Greece will have operational malls covering

190.684 square metres. With respect to mall development it currently ranks no. 200 among 33 European countries.

However, it is expected that, with the addition of several other malls under construction – including one by Charagionis Group and one by Lamda Development – Greece's malls will cover 925.000 square metres by 2010.

Licenses for the operation of malls in Greece are issued according to Article 10 of Law 3377/2005. This Article gives considerable leeway for the construction and operation of new malls and I should mention that it is under great criticism, mainly because malls tend to put single shops out of business.

As far as indirect investment in real estate is concerned, Greece does not have a mature market for the introduction of real estate derivatives yet and the recently introduced investment vehicle of REITS is at an "infant" stage.

Amongst European countries, France, Belgium, Greece, the Netherlands, United Kingdom and Germany have clear, tax - efficient REIT legislation in force. Italy and Spain utilize a hybrid structure which means that their REITS combine investment in both properties and mortgages. Russia and Turkey also have existing REIT structures.

Greece has enacted a legal framework for REITS since 1999 and we continue to improve our legislation as two amendments of the initial law in 2002 and 2007 show. It seems that each improvement in our legislation speeds up developments of the REITS sector.

Already, there are two REITS in Greece: Eurobank and Piraeus Bank and Marfin Bank is anticipated to enter the sector very soon.

In June 2007 my law offices organized an International Conference in Athens on 'Modern Means of Investment in Real Estate' where prominent specialists from Greece and abroad addressed the issue. They all are very excited about the prospects and the recent developments in the sector.

The conclusions drawn at the conference were that:

REITS gradually but steadily have become a major aspect of European investment strategies in real estate.

The legal framework is more or less the same in all countries where relevant legislation is in force with emphasis on taxation incentives.

Europe is rapidly moving towards expansion of this sector and in countries that have introduced REITS legislation, such as the UK and Germany, the capital invested is expected to exceed 100 billion euros over the next five years.

Another indication of the government's will to invite private investment is that, according to the new tax legislation, tax rates have been reduced from 35% to 25% for business enterprises and from 25% to 20% for business partnerships.

Finally, in closing I would like to stress that Greece has, until very recently, failed to invite major private investment because of its bureaucracy and the lack of effective legislation.

There is a clear and urgent will to change and this will has been evidenced by the extensive reforms being introduced by the current Greek Government.

Unlike legislation in the past, there is a current emphasis on coordinating the various sectors of the economy and enacting more flexible and clear legislation, in order to effectively promote development by way of private investment.