



# GREEK LAW DIGEST

The Ultimate Legal Guide  
to Investing in Greece

**Lambadarios Law Firm**

SOCIETE ANONYME -  
COMPANY LIMITED BY SHARES

BANKING SYSTEM

PRIVATE PUBLIC PARTNERSHIPS  
(LAW 3389/2005)



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# GREEK LAW DIGEST

## ■ BUSINESS ENTITIES



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# SOCIETE ANONYME - COMPANY LIMITED BY SHARES Corporations listed on the ATHEX

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## **What are the main legal provisions regulating SA corporations with securities listed on the ATHEX?**

Societe Anonyme, S.A. (Anonymos Etairia) is a company subject to increased state supervision, incorporated by one or more shareholders and governed by a board of directors. SA company is regulated by Law 2190/1920, as it has been modified. In terms of the Greek Law, SA is the type of company mainly listed on the Stock Exchange, due to its basic characteristics and particularly due to the fact, that the shareholders of a Societe Anonyme are not liable for the company's debts with their own assets. This close relationship between stock market and societe anonyme is also evident in the legislation, as the regulation on listed companies is a combination of the law on SA companies and of Capital Market and Stock Exchange law.

More specifically, Law 2190/20 on SA companies, with its recent amendment by Law 3884/2010 which implemented the EU Directive 2007/36/EC, regulates the exercise of certain rights by shareholders of listed SA companies. On the other hand, Capital Market and Stock Exchange regulations also apply to listed SA companies and especially:

- Law 3371/2005 (implementing Directive 2001/34/EC) on capital markets;
- Law 3401/2005 (implementing Directive 2003/71/EC) on the prospectus to be published when securities are offered to the public or admitted to trading;
- Law 3340/2005 (implementing Directives 2003/6/EC, 2003/124/EC, 2003/125/EC, 2004/72/EC) on the protection from abuse of privileged information and market manipulation;
- Law 3556/2007 (implementing the Transparency Directive 2004/109/EC) on certain reporting obligations of listed companies.

## **Which authorities are responsible for the administration of the above legislation?**

The Athens Stock Exchange S.A. (ATHEX) is the organization that administrates the regulated markets related to securities, derivative products, as well as, other financial products. Hellenic Capital Market Commission (HCMC), is the authority primarily responsible for the administration and enforcement of Greek securities laws and as such approves the prospectuses, imposes administrative sanctions and supervises the organised markets operating in Greece.

## What are the Prerequisites for listing of stocks according to the Law 3371/2005 and the Athens Stock Exchange Rule book?

ATHEX operates two regulated markets: the Securities Market and the Derivatives Market. The securities of companies listed on the Securities Market are classified into different categories: (a) the Main Category, (b) the Exchange Traded Funds Category, (c) the Low Free Float and Special Trading Characteristics Category, (d) the Under Surveillance Category, (e) the Structured Financial Products' and (f) the Fixed Income Securities Category.

When stocks are listed for the first time on the Main Category, the following prerequisites must apply:

- At the time of filing of the listing application, the legal status of the issuer must be in accordance with the provisions that regulate the incorporation and operation of SA companies.
- The legal status of the stocks must be in accordance with the provisions that regulate stocks of SA companies.
- The issuer must comply with the provisions in force regarding corporate governance.
- The stocks must be freely negotiable and fully paid up.
- The shareholders' equity of the issuer must be at least 3,000,000 euro on a consolidated basis or, in the event of non-consolidation, the aforesaid criterion must be satisfied by the issuer alone.
- The issuer must have published its annual financial statements for at least 3 fiscal years, audited by a certified auditor
- The issuer must report minimum profits before taxes for the last three years of 2,000,000 euro and profits before taxes for the last two years or EBITDA of three years 3,000,000 and positive EBITDA for the last two years
- The issuer must have an adequate free float by not later than the time of receipt of the decision approving its admission for trading, in a percentage of at least 25% of the total stocks of the same category, distributed to at least 2,000 persons, none of whom holds more than 2% of the total stocks for which admission is being requested. In case such a float can not be achieved, the issuer must proceed to a public offering procedure by the disposal of the necessary number of stocks to the public. In such a case, the total value of the stocks offered must be at least 2,000,000 euro.
- The issuer must have undergone a tax audit, with respect to all tax matters, for all the fiscal years that its annual financial statements - with the exception of the most recent - have been published at the time of submission of the listing application.
- Shareholders, who at the time of approval of the listing of stocks on the Securities Market are participating with a percentage of more than 5% in the share capital of the issuer, may transfer during the first year after the listing, stocks that represent a maximum of 25% of their total stocks.

The above classification of stocks is subject to regular review, following which a stock may be transferred from the one Category to the other. Furthermore ATHEX Regulation

foresees special terms for the admission of stocks in connection with particular types of companies such as insurance and construction companies.

### **What is the procedure for the admission of stocks to ATHEX according to the Law 3371/2005 and the Athens Stock Exchange Rule book?**

The principal stages in applying for a primary listing are:

#### ***Stage 1: Evaluation of the listing application by ATHEX***

The issuer together with the underwriter or sponsor, files an application for the listing of its stocks, accompanied by a supplementary questionnaire and the necessary supporting documents, specified by ATHEX decision 28 /2008 , as has been modified. ATHEX checks and evaluates the documents and the listing requirements and decides whether the issuer and its stocks are suitable for listing.

#### ***Stage 2: Approval of admission***

The issuer's prospectus (as analytically presented below under 5) is drafted and submitted to the HCMC for approval. The prospectus is approved by the HCMC and ATHEX is informed accordingly. The issuer submits to ATHEX the approved prospectus in paper and in electronic form in order for it to be published on the ATHEX website. The issuer submits all the documentation specified by ATHEX decision 28/2008 and ATHEX approves the listing application.

#### ***Stage 3: Commencement of trading***

The issuer submits to ATHEX the supporting documentation (by virtue of the ATHEX decision 28/2008) for the approval of admission. ATHEX accepts the beginning of trading which must take place within 15-calendar days of the approval.

The listing application is rejected by ATHEX in case of non-fulfilment of the listing requirements or of any ad hoc requirements which may have been set by ATHEX, or in case the prospectus is not approved by the HCMC.

### **What are the requirements for a prospectus under Law 3401/2005?**

According to law 3401/2005 for the admission of stocks a prospectus must be published following approval by the HCMC, unless an exemption is applicable. The law allows the issuers to draw up the prospectus either as a single document or by way of 3 separate documents, a registration document, a securities note and a summary note. The prospectus must contain the necessary disclosure prescribed in EC Regulation 809/2004 (as implemented by art. 3-26 of the above Law), i.e. all information which is necessary for investors to make an assessment for the assets and liabilities, financial position, profits and losses and prospects of the issuer and the stocks to be offered to the public and admitted to trading. According to art.9 of Law 3756/2009, the prospectus issued for the admission of stocks for the first time, must be undersigned by a credit institution or an investment firm (EPEY) as underwriters.

The issuer must file the prospectus to the HCMC for approval. Before such filing, the issuer must have obtained a listing pre-approval by ATHEX. HCMC must provide

comments on the prospectus disclosure within 10 to 20 days. Following its approval, the prospectus must be published by the issuer and the offeror as soon as possible, by posting of the prospectus on their website, or by publication in newspapers or by handing out copies to the public. The prospectus is valid for 12 months from the date of its publication. Every new information or mistake included in the prospectus that may affect the evaluation of the stocks and arises after the approval of the prospectus, has to be included in a supplement document which must also be approved within 7 days from its submission and published accordingly.

The issuer, the offeror or the person asking for the admission of securities in a regulated market, their Board Members and any underwriter or advisor are liable for the information included in the prospectus towards anyone who has acquired securities within 12 months from its publication for damages attributable to information included in the prospectus.

Furthermore, Greek Law 3401/2005 regulates also the types of offering that do not require the publication of a prospectus (private placements), for which special provisions apply. In such a case, material information provided by an issuer or an offeror including information disclosed in the context of meetings relating to offers of securities, shall be disclosed to whom the offer is exclusively addressed.

### **What are the obligations of Issuers with stocks listed in ATHEX?**

Following the admission procedure in the ATHEX, the company is subject to a series of obligations that apply only to listed SA companies.

#### ***j) Reporting Obligations***

ATHEX Regulation in article 4 and Law 3556/2007 stipulates a series of obligations to the issuers for providing regular and extraordinary information, regarding their financial statements, the convocation and decisions of the shareholders meetings, the payment of dividends, the issuance of an informative note for company actions, etc. Specifically, Law 3556/2007 stipulates that listed issuers become subject to ongoing reporting obligations and must publish quarterly, half-year and yearly consolidated and non-consolidated financial statements. Additionally, a listed company must disclose any acquisition or disposal of own shares and any changes in its articles of incorporation. It must also make available to the shareholders the annual report which contains the published financial statements for the previous year including the audited annual financial statements, the board of directors report and other information on the company.

Furthermore, Articles 11-15 of Law 3371/2005 enforce the provision of information regarding the listed stocks and the associated with them investors' rights, as well as information regarding financial statements and the structure of the issuers capital.

Article 15 of the same law foresees the obligation of the issuer to provide to HCMC every information the latter judges necessary for the protection of the investors and the good functioning of the market.

Issuers are also obliged, according to Law 3401/2005 to publish an annual informative document which includes information that the issuer has published or provided to the

public within the last 12 months. This informative document is also provided to the HCMC after the publication of the financial statements.

***ii) Obligation regarding inside information and market manipulation.***

According to Law 3340/2005 and decisions 5/204/14.11.2000 and 3/347/2005 of the HCMC as amended, listed companies must inform the public as soon as possible on any inside information which, directly concerns them and if it were made public, would be likely to have a significant effect on the prices of those stocks. Persons who possess inside information, by virtue of their membership of the administrative, management or supervisory bodies of the issuer or by virtue of their holding in the capital of the issuer, are prohibited from using that information to acquire or dispose for their own account or for the account of third parties financial instruments to which that information relates. According to art.7 of the same law, transactions or orders to trade and dissemination of information through the media, which give false or misleading signals as to the demand for or the price of a financial instrument are also prohibited. The issuers are obliged to inform the public without culpable delay of inside information which directly concerns them and to draw up a list of the persons working for them who have access to such information.

***iii) Transaction transparency obligations***

According to art. 13 of law 3340/2005 and decision 3/347/2005 of the HCMC, persons exercising managerial duties within an issuer are obliged to notify the issuer on the transactions conducted on their own account relating to its stocks. The issuer must transmit this notification to the public and the HCMC.

Additionally, law 3556/2007 and decision 1/434/2007 of the HCMC, foresee that any shareholder who acquires or assigns shares in a listed company and as a result the percentage of his voting rights exceeds or falls under the thresholds of 5, 10, 15, 20, 25, 1/3, 50 and 2/3 per cent, must notify both the issuer and the HCMC as soon as possible. Any shareholder that possesses more than 10 per cent of the voting rights in a listed company, must also notify both the issuer and the HCMC in case of modification of his voting rights percentage that is equal or exceeds the 3 per cent of the total voting rights in the company. The issuer must disclose to the public any such significant changes of its shareholders.

***iv) Obligations imposed by Law No. 3016/2002 on Corporate Governance***

Law No. 3016/2002 intervenes in two basic fields of the listed SA companies: the composition of their board of directors (BoD) and the organization of their internal control. The BoD must comprise of executive directors, who deal with the day-to-day management issues of the company and are responsible for carrying out the decisions taken by the BoD, and non-executive directors, who are assigned with the promotion of all corporate issues. The BoD must prepare an internal operation regulation, which is an internal corporate document that sets all the safety procedures for the successful operation of the company and is part of the general internal control system of the

company. The application of the internal regulation is monitored by the internal control system of the company, which includes all the inspection mechanisms and actions that cover the company's activity on a full-time basis. Internal control is carried out by a special and independent body, the internal inspectors, which is appointed exclusively by the BoD.

Furthermore, Law 3873/2010 which adopted European Directives 2006/46/EC and 2007/63/EC sets forth the obligation for listed companies to disclose a Corporate Governance Statement as part of their annual report. The Statement must include specific information, such as the Corporate Governance Code to which the company is subject, a description of the main characteristics of the Internal Control System and Risk Management in relation to the financial reporting process and information on the rights of Shareholders in their General Meeting and on the composition and operating rules of the Board of Directors. According to this new law a company may deviate from the Corporate Governance Code to which it is subject, as long as its Corporate Governance Statement describes these deviations and explains the reasons for non-compliance. In case of inaccurate information in the Statement, the law stipulates the Board members are collectively responsible and liable.

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# BANKING SYSTEM

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## Please describe in general the banking system in Greece.

Banks in Greece are one of the most significant pillars of the economy. In the past decade they have extensively funded all major investment activities and the modernization of the infrastructure of the country along with consumers and SME's.

A major distinction which can be drawn is the one between public and private banks. The number of banks owned or controlled by the Greek State has significantly been reduced in the last years. Today, National Bank of Greece (to a certain extent), Agricultural Bank of Greece and the Post Savings Bank constitute the main representatives of state influence in the economy. Private banks include Alpha Bank, EFG Eurobank Ergasias (a decision for the merger of these two banks with the participation of the Qatar Foundation creating the biggest bank in Greece and one of the biggest in Southeastern Europe was being implemented at the time when this analysis was written), Piraeus Bank, Marfin Egnatia Bank, Citibank and Millenium Bank. The French banks have "invaded" the Greek market with Societe General acquiring Geniki Bank and Credit Agricole acquiring the Commercial Bank of Greece. Furthermore, certain foreign banks have established themselves in Greece either through a branch or a representative office.

The Bank of Greece is the regulatory authority in the country. It is a member of the EYrosystem since Greece is a member of the Eurozone and its Director sits in the Board of the European Central Bank.

The Greek banks are of course suffering from the severe financial situation of the country. Although the financial crisis in Greece was mainly a crisis of the Greek State the banks were indirectly affected as they lost access to the market and had to find refuge to the European Central Bank and the Bank of Greece for liquidity in a number of occasions. It is highly expected that further mergers and acquisitions will take place in the banking sector. As a president of one of the major banks in Greece has said "there is space for 2,5 banks in the Greek economy." Furthermore, it is highly likely that following the implementation of the European Council decisions of October 27th, the Greek State will become a major shareholder in a number of banks, thereby raising concerns about their lending policies and a potential lack of independence of the banking sector.

## What is the legal framework governing the provision of banking services in Greece?

Law No. 3601/2007 (as modified by laws 3693/2008 and 3746/2009) on Credit Institutions, implemented Directive 2006/48/EC of the European Parliament and Council into

Greek law and regulates the establishment and operation as well as the supervisory status of credit institutions.

The Greek supervisory framework draws heavily on the relevant Community legislation, which is in turn consistent with the Basel principles. Specifically, Law 3601/2007 and Bank of Greece Governor's Acts 2587/2007, 2588/2007, 2589/2007, 2590/2007, 2591/2007, 2592/2007, 2593/2007, 2594/2007, 2595/2007 and 2596/2007 make up the new supervisory framework, while Bank of Greece Governor's Acts 2577/06, 2595/2007 and 2597/2007, deal with the issue of the Internal Control Systems (ICS), including auditing, compliance and risk management functions, as well as with Pillar 2 (ICAAP and SRP) and other matters. Similarly, Banking and Credit Committee decisions, 281/5/26.3.2009, 285/6/2009 and 290/12/2009 constitute the institutional framework for the prevention of the use of the financial system for money laundering and the financing of terrorism. More specifically, Law 3601/2007 (hereinafter the "Law") provides for, a) the establishment and operation of the business of credit institutions b) the activities of the credit institutions and c) the supervision on credit institutions and their activities.

### Which activities may be considered banking activities under Greek law?

According to article 2 of the Law, credit institutions are undertakings whose business is to receive deposits or other repayable funds from the public and to grant loans or other credit for their own account.

Furthermore, art. 11 of the Law, stipulates the activities of the credit institutions as follows:

1. Acceptance of deposits and other repayable funds
2. Lending including, inter alia: consumer credit, mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting)
3. Financial leasing
4. Money transfer services
5. Issuing and administering means of payment (e.g. credit cards, travelers' cheques and bankers' drafts)
6. Guarantees and commitments
7. Trading for own account or for account of customers in:
  - (a) money market instruments (cheques, bills, certificates of deposit, etc.);
  - (b) foreign exchange;
  - (c) financial futures and options;
  - (d) exchange and interest rate instruments; or
  - (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice on mergers and purchase of undertakings
10. Money broking

11. Portfolio management and advice
12. Safekeeping and administration of securities
13. Credit reference services
14. Safe custody services

### **What are the various ways under which these banking activities may be provided in Greece by entities coming from the EU?**

All the activities mentioned above, also included in Annex 1 of Directive 2006/48 of the EC, can be freely exercised by credit institutions of any Member State, either by the establishment of a branch, or by way of provision of services without establishment (cross border), and provided of course that they are regulated in their home member state.

### **How is the freedom to provide services in accordance with EU Law being implemented under Greek law?**

According to articles 49-55 of the EU Treaty, the citizens of a member state can provide services to other member states freely.

Greek Law 3106/2007 in implementation of the Directive 2006/48, regulates the freedom to provide services in Greece by entities established in other member states. According to art. 15, any credit institution of another Member State wishing to exercise the freedom to provide services by carrying on its activities within the Greek territory for the first time, should meet the following requirements:

- a. It must have received a license to operate in another member state and must be supervised by the competent authority of the other member state.
- b. The activities that the credit institution intends to carry on in the Greek territory, should be included in its operation license.
- c. The credit institution of another Member State must notify the competent authorities of the home Member State, of the activities on the above list which it intends to carry on. The competent authorities of the home Member State shall, within one month of receipt of the above notification send that notification to the competent authority of Greece, i.e. the Bank of Greece This is a direct consequence of the "Single license system".
- d. the credit institutions should comply with the rules of the Greek territory in connection with banking legislation as well as legal rules that have been adopted in the interests of the general interest.
- e. the credit institutions advertising their services through all available means of communication in the Greek territory are subject to any rules governing the form and the content of such advertising adopted in the interests of the general interest.

More specifically, the competent authority of the home member state must only notify to the Bank of Greece its intention to provide cross border mutually accepted services in Greece. Such activities should be provided in the same manner as they are provided in their home country, and they should not violate the provisions of the legislation on credit institutions, capital market and consumer protection that aim at protecting

investors and consumers of banking products and services or other provisions of public interest.

### **How is the provision of banking services in Greece by credit institutions of other member states regulated?**

The Bank of Greece, pursuant to Article 55A of its Statute, (Law 3424/7 December 1927) exercises prudential supervision over credit institutions. The object of such supervision is to ensure the stability and efficiency of the banking system and, more generally, the smooth operation and stability of the Greek financial system. The Department for the Supervision of Credit and Financial Institutions of the Bank of Greece is responsible for the prudential supervision of credit and financial institutions.

The provisions of art. 25 of Law 3106/2007, regulate the supervision of credit institutions and their activities. The Bank of Greece supervises the credit institutions with registered seat in Greece, and their branch offices in abroad, as well as the branch offices in Greece of credit institutions of third countries. In contrast, branch offices of credit institution of other member states, are supervised by the competent authority of the home member state except a) the supervision of their cash flow which is also supervised by the Bank of Greece in cooperation with the authority of the home member state and b) the supervision that their activities are provided in the same manner as they are provided in their home country, and that they do not violate the provisions of the Greek legislation.

Especially the provision of cross border services by credit institutions authorized in other member state in Greece, is only supervised by the competent authority of the home member state. According to art. 16 of Law 3106/2007, credit institutions authorized in other member states which are pursuing activities listed in art. 11 of Law 3106/07 as above, through provision of services without establishment in Greece, may pursue these activities in the same manner as in their home country, provided they do not violate the provisions of the legislation on credit institutions, capital market and consumer protection or other provisions of public interest.

Furthermore, the above credit institutions may advertise the services provided by them, subject to the provisions in force in Greece governing the type and content of such advertisement with a view to supplying sufficient and correct information to the public. The Bank of Greece within the scope to control the transparency and conditions of transactions may require adjustments to the content of the advertisements.

### **What are the potential measures and penalties on credit institutions authorized in other member states in case of breach of their obligations?**

According to the art. 65 of Law 3106/07, in case a credit institution authorized in another member state and providing services in Greece is not complying with Law 3106/2007, the Bank of Greece shall require the credit institution to comply with these provisions. If the credit institution fails to comply, the Bank of Greece shall inform accordingly the competent authorities of the credit institution's home member state, which shall take all appropriate measures for compliance. If, despite the measures taken by the competent

authorities of the home member state or if such measures prove inadequate or are not available in the member state, the credit institution persists in violating the related provisions, the Bank of Greece shall, after informing the competent authorities of the member state, take appropriate measures to prevent or condemn further irregularities or impose penalties according to the provision of Law 3106/07. It may also prevent the credit institution from initiating further transactions in Greece.

The Bank of Greece, prior to initiating the procedure referred to above, may take any precautionary judicial or extrajudicial measures it deems necessary to protect the interests of depositors, investors or other persons to whom services are provided, informing of such measures the Commission of the European Union and the authorities of the home member state.

In case of withdrawal of the authorization of a credit institution by the competent authority of the member state, the Bank of Greece shall prevent the credit institution from initiating further transactions in Greece and shall take the necessary measures to secure the interest of depositors, investors or other persons to whom services are provided.

Governor's Acts 336/29 February 1984, 2593/24 February 2004 and 2612/13 November 2008, established the Banking and Credit Committee (BCC), a body composed of members of the Administration and Heads of specific Departments of the Bank of Greece, with a main duty to impose fines and penalties for violations of the above provisions on credit institutions.

### **Are there any consumer protection provisions that those active in the banking sector in Greece should follow?**

Credit institutions must abide by Greek consumer protection and advertising legislation. Please find below a presentation of the most important provisions of the Greek legislation on Consumer Protection and Advertising:

The general provisions of the Greek Civil Code (in particularly the articles GCC 57, GCC 281 and GCC 288), and Law 2251/1994 on Consumers' Protection establish a regulatory framework shelter for consumers against creditors' behaviours, being described as abusive and unfair.

Law 2251/1994, stipulates that contracts - including the contracts within the financial services market - must not contain unfair terms. This law protects consumers' economic interests vis-a-vis a potential abuse of power by the suppliers of financial services.

More specifically the law protects consumers from the standard contracts prepared by financial institutions that sometimes exclude essential rights of consumers. Such general transaction terms (GOS), (i.e. terms that have been made in advance for an indefinite number of future contracts) are prohibited and void, if they result in excessive imbalance of rights and obligations of the parties to the detriment of consumers.

Greek courts have already issued a number of important decisions on unfair terms used by credit institutions. For example, a) terms, which give the financial supplier the right to alter unilaterally basic terms of a contract b) a term that limits the liability of the banks

only for fraud or gross negligence of its employee, excluding in this way the responsibility for tight negligence, c) a term that imposes a cost of inactivity in deposit accounts, or d) a term authorizing the supplier to dissolve the contract in case there is some delay in the repayment of the credit, have already been characterized by the courts as unfair and thus void.

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# PRIVATE PUBLIC PARTNERSHIPS (LAW 3389/2005)

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## What are Public Private Partnership (PPP) Projects?

PPP Projects are written partnership contracts between public and private entities on the performance of projects or the provision of services to the public against a predetermined consideration. Thus, private undertakings may undertake the design, financing, operation, construction maintenance and administration of projects or the provision of services on behalf of the State, through a well defined legal framework which aims at an optimized combination of private and public funds.

The legal framework of PPP Projects in Greece is governed by Law 3389/2005, as amended by L. 3483/2006, L. 3375/2009, L. 3746/2009, L. 3840/2010, L. 3982/2011 and L. 4013/2011.

## What does the term “Public Entities” include?

Pursuant to Article 1 para. 1 L. 3389/2005, the term ‘Public Entities’ includes:

a) the State, b) the Organizations of Regional Administration and the Regional Associations of Municipalities and Communities, c) Public Law Legal Entities and d) Sociétés Anonymes whose total share capital belongs to the entities above under a), b) and c) or to other Société(s) Anonyme(s) falling under this category.

## What are the conditions pursuant to which a project may qualify for a PPP?

Articles 1 and 2 of Law 3389/2005 set out the conditions, pursuant to which a project may qualify for a PPP:

- a) The project concerns the construction of works or the provision of services which fall within the scope of Public Entities, by virtue of law a contract or their articles of incorporation. Activities that belong exclusively to the State, according to the Constitution, and especially national defense, police surveillance, awarding of justice and execution of judicially imposed penalties constitute the subject-matter of PPPs.
- b) The private entities conclude contracts through Special Purpose Sociétés Anonymes (SPVs) that are established by them exclusively for the purposes of the project.
- c) The private entities assume the risks associated with the financing, the availability and the construction of the necessary infrastructure or the provision of the services, against a consideration paid in lump sum or in installments, by the Public Entities (availability payments) or the end users of the services (e.g. tolls).
- d) The financing of the project is made through resources secured by private entities.
- e) The total value of the project does not exceed the amount of EUR 200 million (VAT not included).

However, following a unanimous decision of the Inter-ministerial PPP Committee, it is possible for a project to fall under the provisions of Law 3389/2005, even if one or more of the requirements under c), d) and e) are not fulfilled. Conditions a) and b) however must be always satisfied.

## What is the procedure for the submission of a project to the PPP Law?

A special unit for PPPs (PPP Special Secretariat) is established in the Ministry of Finance, Competitiveness and Shipping, with the responsibility to identify projects that can be

delivered via PPP schemes. Any Public Entity that wishes to implement a PPP project submits a proposal to the PPP Special Secretariat outlining the technical, financial and legal aspects of the proposed project. The PPP Special Secretariat evaluates the proposal and, provided that the criteria of the Law 3389/2005 are met, includes it in the “List of Proposed Partnerships”. Such list is a non-binding list with PPP projects provided that they fall under the provisions of Law 3389/2005.

Once the list is finalized, the PPP Special Secretariat invites the Public Entities concerned to file a petition for submission of the project(s) to Law 3389/2005, within an exclusive time-period of two months. The petition is submitted to the Inter-ministerial PPP Committee, which consists of the Minister of Finance, Competitiveness and Shipping, the Minister of Infrastructures, Transport and Networks and the Minister of Environment, Energy and climate Change, as ordinary members, and the Minister(s) who supervise(s) each of the Public Entities which are to participate in the PPP contract or associated contracts, as extraordinary members.

The Inter-ministerial PPP Committee, issues a relevant decision within two months from the receipt of the Public Entity’s petition. If the project is approved, the PPP Special Secretariat assumes the coordination of the assignment procedure through which the private entity will be selected.

### **What is the procedure for the assignment of a PPP project to a private entity?**

Chapter C (articles 7-16) of Law 3389/2005 determines the basic principles (equal treatment, transparency, proportionality, freedom of competition etc), the criteria (criterion of the most beneficial profitable offer from a financial aspect or criterion of the lowest price) and the assignment procedure for the selection of the private entity that will undertake the project. The procedure is briefly the following:

- a) The Contracting Authority (Public Entity) calls for tenders determining the scope of the contract, the nature of the assignment procedure (Open Tender, Restricted Tender, Competitive Dialogue or Negotiation), its terms and criteria, as well as the minimum qualifications required from potential bidders. In the restricted tenders, competitive dialogue procedures and negotiations procedures, the Contracting Authority may short-list the bidders.
- b) The interested parties submit their offers.
- c) The Contracting Authority selects the private entity which will undertake the project on the basis of the criteria provided by Law and the tender documents.
- d) Finally, the PPP contract is concluded between the Contracting Authority and the SPV established by the selected private entity for this purpose.

### **How is the PPP Company (private entity) repaid?**

The PPP Company may be repaid either by the Contracting Authority, or by the end users through user charges.

In the first case, the Contracting Authority reimburses the initial investment of the PPP Company through availability payments, pursuant to certain output specifications. In order to be paid in full, the PPP Company must not only construct the project infrastructure, but also undertake the efficient operation, maintenance and management of the project throughout the contractual period. Upon the termination of the contractual period, the infrastructure is transferred to the Public Entity.

In the second case, the initial investment of the PPP Company is reimbursed by the end users through fees (e.g. tolls), once the construction of the project is completed. The payment procedure and the relevant details are determined by a decision of the Inter-ministerial PPP Committee. If the fees paid by the end users are insufficient for the full payment of the PPP Company, the Contracting Authority may make lump sum payments during the construction of the project or availability payments during its operation.

### **Is there a limit as to the size of the projects to be implemented as PPP?**

Greek Law does not provide a minimum amount for the implementation of PPP projects. However, given that every invitation to tender entails certain costs, the State tends to group together similar projects and issue a single invitation to tender for all. Therefore the relevant budget is usually quite high.

The maximum budget limit for PPPs is EUR 200 million (not including VAT).

### **Who undertakes the design of the PPP project?**

The main technical specifications of the PPP project are determined by the Contracting Authority, including sometimes any preliminary studies. However, the completion and delivery of the final studies is normally undertaken by the PPP Company.

### **Can a private entity submit a proposal for a project?**

Private entities may submit a proposal for a project to Public Entities. However, only Public Entities are entitled to submit project proposals to the PPP Special Secretariat, either on their own initiative or following a proposal of a private entity. In the latter case, if the project is finally approved for implementation as a PPP, the private entity that proposed it does not automatically assume its performance: it must participate in the tender like any other candidate.

### **What is the applicable law / dispute resolution?**

Article 31 of Law 3389/2005 provides that all disputes arising from the PPP Contracts will be resolved by arbitration and that the applicable law will be Greek.

### **What are the main advantages of the PPP Framework?**

The main advantages of the PPP institutional framework may be summarized as follows:

- The implementation cost of the relevant projects is clearly outlined.
- The implementation and management of the projects by private entities is quicker and more reliable.
- The private entities assume a great part of the risks (constructing, financing etc) that are associated with the implementation and management of the project
- The experience and know-how of private entities is transferred to the State
- Private entities (PPP Companies) are offered some important privileges, which are, in brief, the following:
  - a) They are exempted from income tax on the accrued interest acquired until the time upon which the exploitation of the project begins.
  - b) Any financing contribution paid by the Public Entity (Greek State, Municipalities, public companies etc) is considered a capital subsidy and is VAT exempted, is not subject to income tax and is paid free of any levies in favor of third entities.
  - c) The VAT credit balance shall be refunded to the Special Purpose Company according to the relevant provisions of article 34 of the VAT Code. The relevant application for VAT refund may be submitted with the final VAT return for every financial year and the refund of the respective amount shall be effected within 90 days from the submission of the application.
  - d) The issuance of the necessary administrative permits is accelerated (exclusive deadline of 60 days from the submission of the file, the lapse of which is equivalent with the granting of the permit). However, in case of archaeological findings, the above 60-days deadline may be extended.
  - e) The total cost for the implementation of the project, including the constructing cost, the interest accrued during the period of the construction and any other cost for the supervision, insurance, the fees of counsels, potential technical controls, legal fees, fees for establishment and reestablishment and fees for letters of guarantee, is depreciated at the Special Purpose Company's choice, either with the straight line method for the whole period of the operation of the project or with the 10 years straight-line method

with an option to elect within one month from the completion of the project the years of application of the straight-line method.

f) Tax losses of the Special Purpose Company can be carried forward to offset taxable profits of the next 10 subsequent fiscal years.

### What are the main differences between PPP projects and concession agreements?

a) All concession agreements are traditionally ratified by law and therefore have to be approved by the parliament. Such ratification is not required with regard to PPP contracts, as Law 3389/2005 i) determines their minimum content, ii) is quite explicit and flexible, thus limiting the need for deviations through parliament ratification and iii) resolves issues which traditionally required special legislative regulations (see Chapters E and F on archaeological findings, environmental protection, issuance of permits etc) .

b) The use of an SPV for the project by the successful bidder is a legal requirement under Law 3389/2005, whilst this is not the case in concession contracts, albeit usual in practice.

c) Law 3389/2005 provides that any collateral provided by the SPV for its financing is excluded from the insolvency assets of the SPV and cannot be used for the satisfaction of any other creditor. There is no similar provision in the law for concession contracts.

d) Pursuant to Law 3389/2005, all disputes arising from the execution of the contract are resolved through arbitration. There is no specific provision to that effect in the law of concession agreements and therefore the means of resolution of potential disputes must be resolved on an ad hoc basis. However, in practice, all concession agreements include a detailed arbitration clause.

e) Presumably due to the fact that the legal provisions regarding PPP's are very detailed, in contrast to the ad hoc solutions provided in concession agreements, experience has shown that during concession projects, legal issues usually arise and that may lead to challenges in court, while PPP projects tend to proceed more smoothly.

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