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Content:

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Property Ownership in Greece

General

Owning property in Greece is simple and straightforward. The procedure for buying real estate property in Greece is fast and simple. Greek laws authorise foreigners to own properties in most areas of Greece. Anybody, regardless of nationality, can be a property owner. Property in Greece is under the protection of the State (Greek Constitution: Article 17, paragraph 1); all property owners in the country have equal rights and responsibilities.

Restrictions apply only for Non European Union citizens who want to purchase property in border areas (East Aegean, Dodecanese islands, regions of Northern Greece, Crete, Rhodes). They will have to apply to the Council of local Prefecture which grants authorisation after having investigated your position in the community to ensure that you do not have a history of any kind which might be detrimental to the security of the island.
The list of necessary documents when buying property in border areas for NON European Citizens and entities you find.

The Greek Law requires that for each real estate property transaction, there are three legal professionals involved:
Lawyer, to investigate for the property at the Registry (Who is the proprietor, whether exists juridical suspense or claim, whether is mortgaged or is registered garnishment) and participate as a representer before the Notary at the contracts,
Notary Public to draw the contract (deed)
Registrar to register it officially to the local Mortgage Office.
All property titles in Greece are kept on the Mortgage Offices of each municipality, according to the alphabetical order of the names of the owners. A modern Land Registration System was recently introduced and is gradually replacing the old registration system, while most of the country has been mapped with new technology systems.

Civil Engineer Additionally a Civil Engineer is necessary to check the existing topographic diagram that accompanies the proposal of sale and see the real estate. A right topographic diagram includes: the area of the real estate, possibility of layout, the character of extent (whether is in a built-up area) and various other technical characteristics e.g. approvals from forest inspection or archaeological service etc.

Real Estate Agents The Greek real estate agents law is regulated by Presidential Decree No 248/1993 regarding real estate agents. Article 1 defines real estate agents as natural or legal persons (corporations), who mediate for the conclusion of real estate purchase, exchange or lease contracts. The agent commits, through the agency contract, to draw the attention of the other party - the principal - to opportunities that arise in exchange for a commission. The role of the agent must be distinguished from that of a representative by virtue of proxy. The agents' commission is only payable when the contract is concluded as a result of the agent's activity, except if the parties have agreed otherwise. The agreed commission, in principle, amounts to 2-4 of the amount actually paid plus VAT at 19. The agent's commission is normally borne by the purchaser; in practice, it is not rare that the seller also pays agency fees, if he/she had also engaged the agent. Under such circumstances, the agent earns agency fees for the same item twice. Other arising expenses are paid to the agent only on the basis of a corresponding agreement.

Any person performing real estate agency activities in Greece must hold a valid real estate license. This applies particularly to non-resident real estate agents, i.e. realtors who are licensed to practice in a foreign state often the state of origin of the principal and who don't maintain a place of business in Greece but only periodically come to Greece to operate and perform real estate activities. The obligation to hold a real estate license also applies to persons of another profession, who see the real estate agency as a secondary source of income and only occasionally engage in real estate activities.

Real estate licenses are issued by the Athens Vocational Chamber, which keeps a Real Estate Agents' Register. In order to be registered with the Real Estate Agents' Register, the prospective licensee must submit an application in accordance with the requirements of Presidential Decree No 248/1993. Despite the aims to reduce barriers to the movement of services, there is still no provision for the mutual recognition of licenses issued by EU-member states so that non-resident European real estate agents are not exempted from the Greek licensing procedure. Prospective licensees are strongly recommended to consult a lawyer specialized in Real Estate Agents Law before starting the licensing procedure. The applicant may give representation power to his attorney for the submission of the application and the supporting documentation. Contracts possibly concluded with unlicensed real estate agents shall be treated as null and void. For the unlicensed real estate agent this means that he has no substantiated claims for the amount of the agreed commission. He may however claim compensation for expenses he made. On the other hand, customers who have already paid an unlawful commission may put forward claims of unjust enrichment of the unlicensed agent requesting refund of the unduly paid fees.

Apart from the enforcement of the agent's fees, the unlicensed agent may be held criminally liable for fraudulent misrepresentation of facts and professional qualifications. Criminal liability may also occur with view to tax offences (tax evasion etc.), since real estate agents, irrespective of their nationality or permanent residence, are liable to Greek income tax and are under a Greek bookkeeping obligation.

RESTRICTIONS

Most properties in Greece are freehold ownership. A nationwide Land Registry is underway; some islands already have land registries, while properties in the other areas are registered in the Registry of Mortgages of the area where the property lays.

Buildings in Greece are designed and constructed in accordance with European Regulations and Standards, and they are in total compliance with stringent regulations for earthquake protection.

Nevertheless, in certain areas qualifying as frontier regions, which are of huge importance from a military and security policy point of view, purchasers may acquire property only if they hold official permission. Contracts possibly concluded without such permission shall be treated as null and void. Frontier areas qualify as among others - the Prefectures of Lesbos (Mytilini), Chios, Samos and the Dodecanese, as well as the islands of Skiros and Thira (Santorini) and the Prefectures of Chania, Rethymno and Lasithi in Crete. Since the designated frontier areas may be changed by virtue of a Presidential Decree at anytime, any interested purchaser should be advised on the currently applicable law from a lawyer specialized in real estate law before engaging in negotiations.
Although the restrictions apply to Greeks and foreigners alike, there is a different procedure for lifting the restrictions:

-PROCEDURE TO BE FOLLOWED BY EU-CITIZENS (INDIVIDUALS AND LEGAL ENTITIES)
Application to the locally competent Prefecture.

Greece is a Member-State of the EU since 1981. All EU-citizens have equal rights concerning the purchase of property in Greece. Like Greek nationals, they should apply for the lifting of restrictions at the Prefecture in which the property to be purchased is situated.
The application should contain:

- a description of the item on sale,
- the purpose of the acquisition,
- information about the purchaser (e.g. profession, previous penalties, etc).

The application should be submitted together with the following documents: • the tide of ownership of the asset.
In the case of EU-based legal entities the following further documents are required:

- an officially certified copy of the Articles of Association
- the financial reports of last year
- a Good-Standing Certificate
- an attestation that the share capital has been paid.

In the case of a Societe Anonym also:

- a list of the main shareholders,
- a list of the members of the Board of Directors.

Based on experience, the permission process lasts one to three months and is free of charge.

- PROCEDURE TO BE FOLLOWED BY THIRD-COUNTRY NATIONALS
Application to the Greek Ministry of Defense
Third-country nationals (e.g. Swiss citizens) should address the permission application to the Greek Ministry of Defence. The respective decision-making Committee consists of delegates also from the Ministries of Finance, Public Order and Agriculture. Any awarded permission may be repealed by the Minister of Defence.
Apart from the documentation filed by EU-citizens, the Ministry of Defence additionallv requires: • a topographic plan of the real estate asset and the surrounding area.
By experience, this process is estimated to last three to six months and is charge-free.

Apart from the procedure mentioned above, there are numerous restrictions in the acquisition and use of real estate property, which apply to both foreign and Greek citizens. Since these restrictions, which have been placed to serve the protection of common wellbeing and the public interest, cannot normally be derived from the Land Registry or the Registry of Mortgages, it is advisable that those impediments be clarified with a specialized lawyer prior to entering into purchase negotiations.
Many acquisition restrictions can be derived from the legislation on the protection of nature and monuments. In this respect, for the purpose of protecting forests, fragmentation thereof through the division among co-owners or the disposal of parts to third persons is forbidden. The locally competent Forest Authorities provide, on request, a written certificate evidencing whether the land in question lies in a protected forest area. Similarly, the acquisition of real estate assets in protected archaeological sites is not allowed. Further, the owners of certain houses placed under the regime of monumental protection must undertake to finance the refurbishments of those houses on their own. The officials at the locally competent archaeological authority

clarify whether a certain piece of real estate qualifies as a protected item. On the coastline and foreshore, no private ownership right can be acquired.
Pieces of land located in forest or protected natural areas or archaeological sites should by no means be built on. As regards pieces of land adjacent to the seashore, buildings should have a minimal distance from the beach (currently 35 metres - "point up to which the winter waves strike").
The Greek building law distinguishes between land located within the area of city planning and land outside that area. Real estate assets located within the area of city planning shall normally have access to a public street and offer connection with the electricity, water and telephone network. Building may in principle be allowed in plots outside city planning where the latter contain a surface of over 4,000m . The various coefficients applying to building and surface coverage shall determine the maximum allowed number of storeys and covered surface.

OBJECTIVE VALUE OR CONTRACTUALLY AGREED PRICE?

Mind that the values of real estate which constitute the basis for calculation of all kinds of real estate taxes, dudes and fees (for registration, lawyer, public notary) are computed in Greece according to two different systems. In areas within city planning, the system of the so-called "objective values" is applicable. The objective value of the asset in question is calculated by the Tax Office pursuant to a standard method set by the State. The objective values are a system of unified values which are calculated based on objective criteria such as the location and construction of the specific real estate assets. These values are, based on experience, by 20 to 50 lower than the normal market values of the assets. That leads to the parties' often stating, for fiscal purposes, the objective value as purchase price in the transfer contract. This discrepancy between the contractually agreed price and the true sale value may give rise to legal risks for the purchaser. This is the case especially upon a subsequent reversion of sale for legitimate reasons. It should be noted however, that the government has signaled its intentions to, increase the objective values. Since this will lead to a significant increase of purchase costs (transfer tax, fees etc.), prospective buyers are recommended to finish their transactions before this date.
In the Greek countryside, where there is no city planning, there is, in principle, no system of objective values set by the State. The system applicable to these cases is the so-called system of "comparative values": according to this system, the competent local tax authorities estimate the value of a real estate asset taking account of the values employed in past contracts on similar assets located in the same or a close-by area.
In case the contractually agreed price is higher than the "objective" or "comparative" value of the asset, only the former is used as the calculation basis for taxes and fees.

7 STEPS FOR THE SAFE ACQUISITION OF PROPERTY IN GREECE

Contracts that concern real estates in Greece are drawn up by Notaries. In order to buy and sell a real estate in Greek territory the following procedures are imposed to be done by the candidate purchaser after selecting the desirable real estate.

1. APPOINT A LAWYER

The presence of a lawyer during the conclusion of a real estate transfer through signing of the contract deed is for both purchaser and vendor obligatory if the value of the transaction amounts to approximately (29,137 for assets located in the area of Athens/Piraeus, and (11,739 for all other parts of Greece. The obligation applies to all contracting parties.
The Greek lawyer does not only accompany each contracting party but also drafts the contract deeds and provides all necessary legal advice. However, most importantly, in the most likely case of an asset not yet included in the Land Registry system, the buyer's lawyer must conduct a factual search at the Registry of Mortgages and ensure first, that the seller holds a sound tide to the property. The uncertainty of the Greek law and of the system of the Registry of Mortgages, as described

above, is resolved in practice through the examination of the legal relationships in connection with the specific asset over a period of 20 years. If the seller possessed the asset in good faith for over 20 years, he has namely automatically gained original ownership.
The lawyer must also make sure that the property is unencumbered (free of burdens like mortgages or prenotations of mortgage) and free of claims (no injunctions and enforcement measures or actions pending). Further, the lawyer has to examine if possible construction works are based on lawful building permission and all real estate taxes burdening the seller have been paid. Finally yet importantly, the lawyer often plays a significant role in successfully negotiating the transfer. The lawyer is supposed to precede the research for the legal situation of real estate. As long as National Cadastral map of all territory does not exist in Greece, the cadastral office is now replaced by the land registry where is written down anything that concerns the real estate. In the cities that "CADASTRE» has functioned control must be done.
Namely: Who is the proprietor, whether exists juridical suspense or claim, whether is mortgaged or is registered garnishment etc
Under a simple condition: To have done at least one legal act or notarial act which concerns this real estate, because most of the real estate especially at rural regions do not have titles of property but are transmitted without contracts. Title for these real estates is usucaption. The lawyer who does the legal research at the end of the research does a legal estimation of the real estate
The Greek Lawyers' Code (Legislative Decree 3026/1954) provides for the minimum remuneration of lawyers. The lawyers' fees shall freely be agreed to the extent those are not lower than this minimum remuneration. Up to a real estate transfer value of (44,000, the minimum fees are set at 1; for a value between (44,021 and (1,467,000 the fees are 0,5; for any excess, 0,4 shall be due. The lawyers' fees shall be paid prior to the procedure before the notary public and 35 of the overall amount retained by the competent Bar Association. It must be mentioned that the above fees cover only the drafting of the i contract deed and the obligatory presence of a i; lawyer during the signing of the contract and not the 1 factual and legal search that every case depending on its peculiarity or complexity requires. We suggest that foreign investors always appoint a reputable lawyer, who specializes in real estate law and is fluent in the mother language of the client.

2. APPLY FOR A TAX REGISTRATION NUMBER
In order to deal with the Greek Fiscal Authorities, it is necessary to have acquired a Tax Registration Number (AFI). Foreign buyers should apply for the acquisition of a Tax Registration Number issued specifically for taxpayers incurring a limited tax liability at the competent Tax Office (Tax Office for Foreigners - DOY Katoikon Exoterikou).

3. PAY TRANSFER TAX
The real estate transfer tax is borne by the purchaser. The rate is currently set at 9% for real estate values up to (15,000 and 11 % for any excess thereof. In areas with no fire brigade service, the above rates are 7% and 9 %respectively. Further, a surtax amounting to 3 of the tax due as above shall also be levied.
Purchase of the first-ever principal residence shall in principle remain tax-free where it is effected by Greek or EU-citizens that maintain their usual residence in Greece. The exemption also applies to Greek persons living abroad who have worked outside Greece at least six years and remain registered with whichever Greek Community Registry, even where they maintain no usual residence in Greece at the time of purchase. In the case of non-married persons, the exemption from tax goes up to (65,000 for a flat and (30,000 for a piece of land. Any excess shall be taxed at the standard rate. Further, a release from tax of up to (100,000 applies to each married, non-married, divorced, or widowed parent to whom parental care has been entrusted. The above amount shall be increased by (20,000 for each of the first two children and (30,000 for each child in excess of the above.

4. APPOINT A PUBLIC NOTARY
The public notary's function and duties are very limited in Greece. The notary's duty to

explain to the contracting parties their obligations and rights that arise from the respective transaction and make sure they are aware of the implications of their commitments is fulfilled in practice through the reading of the contract deed before signature. The instructed lawyer usually suggests a notary of his preference and trust.
The nonotarizationostsfor a typical real estate purchase deed depend on the respective transaction value. The notary's fees are currently fixed at 1.2% of the total transaction value. 9% of the overall amount due is paid to the Jurists' Fund and 6% to the Notaries' Social Securlty Fund. In addition to the fee fixed on the value, another fee related to the size of documents is also payable.

Example (amounts are in EURO):

Purchase Value	Notarial Fees
100 000	1 235.64
500000	6035.64
1 000 000	12 035.64
5 000 000	60 035.64

5. FIND A CIVIL ENGINEER

Assign in a Civil Engineer to check the existing topographic diagram that accompanies the proposal of sale and see the real estate. A right topographic diagram includes: the area of the real estate, possibility of layout, the character of extent (whether is in a built-up area) and various other technical characteristics e.g. approvals from forest inspection or archaeological service etc.
The Civil Engineer checks all the existing topographic diagrams that accompany the proposal of sale and see the real estate. A right topographic diagram includes: the area of the real estate, possibility of layout, the character of extent (whether is in a built-up area) and various other technical characteristics e.g. approvals from forest inspection or archaeological service etc.

6. SIGN THE PURCHASE AND TRANSFER DEED BEFORE A NOTARY
Both the purchase and transfer contracts require nonotarizationContracts, not concluded in the required form, shall be null without possibility of remedy.
Formal requirements of notarization
For the notarization of a purchase deed, a number of formal requirements shall be fulfilled.
For the seller, the following documents and declarations should be filed with, and made before, the Authorities respectively:
• Certificate from the competent Tax Office that the seller incurs no fiscal debts.
• Statutory declaration that in the last two fiscal years, the seller has derived no profits from the item of sale.
• Statutory declaration that the seller properly declared the item of sale in his tax return.
• Certification by the Tax Office that Property Tax has been paid. In practice, evidence will be shown upon demonstration of the relevant receipt for the payment of tax.
• Certification by the Tax Office that Inheritance and Gift Taxes have been paid, when the seller has come into ownership of property through inheritance or gift.
• Certificate by the Community of the asset's location giving evidence that there are no debts to the Community.
• Planning permission where the asset has been built.
• In areas in which the Land Registry system applies, certificate by the Land Registry regarding the status of the item.
For the purchaser, the following documents should be filed:
• Certificate by the Tax Office that the purchaser incurs no fiscal debts and
• Evidence by the Tax Office of payment of the real estate transfer tax.
Do I have to be in Greece to complete the transaction?
Procedure at the Consulate
The existence of a Greek Consulate is of huge practical importance for foreign purchasers, as the Consulate can carry out legal actions which, in Greece, fall within the scope of a notary's competence. That means that the purchase and transfer contract can be signed abroad before a Greek consular official. It should also be pointed out that no fees are chargeable for the conclusion of contracts by the Consulate.
Representation through proxy: Each contracting party can give authority of representation to another person by signing a

Power of Attorney. The proxy can also be given to the lawyer of the contracting party.
Content of proxy: Proxies concerning real estate transactions must be specific. That means that the precise conditions of the contract (purchase price, etc) as well as the specific object thereof must be clear and specifically set out. Where one or more of the real estate assets in question are not mentioned explicitly in the proxy, nor are they precisely described therein, the auauthorizationiven by virtue of the proxy shall be treated as ineffective.
Form of proxy: Proxies by the real estate seller and purchaser must take the form of a notarized document. A proxy may be granted before a Greek Notary or when abroad, a Greek consular official. Further, foreign notaries shall be rerecognized Greece insofar as they have been vested with the "Apostille" form and officially translated in the Greek language.

7. REGISTRATION WITH THE REGISTRY OF MORTGAGES

The nonotarizedontract for the transfer of property can be effective only if combined with a registration of the transfer with the Regisrty of Mortgages or the Land Registry. The registration is constitutive of a transfer.
What are the costs of registration?
The current registration costs are set at 0,475% of the asset value. The registration costs are borne by the purchaser. However, another agreement of the parties is possible.
OTHER ISSUE
When a region is taken out of the system of Registries of Mortgages and into the Land Registry system, existing property owners are required to declare their property rights on real estate within a specific deadline. When declaring a right, the acquisition tide should be attached. The declaration costs amount to €20 per property right entitled to registration. The rights declared shall then be tested for legality. The declaration and filing of property rights on real estate assets in the new Land Registry system is a prerequisite for the completion of property transactions and granting of planning permissions.
Yet, contrary to the Land Registry system, registrations with the Registries of Mortgages enjoy no public faith in Greece. The person in charge of the Registry of Mortgages examines only the typical compliance with the law and not the substantive legitimacy and validity of the registrations made. Registrations are not subjected to a legality test.
Therefore, the purchaser may register a purchase deed also in those cases that the seller does not appear in the Registry of Mortgages as owner. In Greek law, it is not possible that a purchaser buying in good faith acquires immovable property from a person that is not the owner. In addition to that, an invalid property transfer contract cannot be remedied through registration with the Registry of Mortgages. It therefore follows that despite the existence of validly nonotarizedurchase and transfer deeds and proper registration thereof, no ownership over the property has been acquired, if the seller was not the owner or was legally hindered upon transfer. For this reason, the potential purchaser should make sure, through the assistance of a lawyer, that the asset to be purchased is owned by the seller.

CONTRACTS STRUCTURE AND CONTENT

Contracts that concern real estates in Greece are drawn up by special permitted law professionals called notaries and practise only this profession i.e. drawing up contracts. In order to buy and sell a real estate in Greek territory the following procedures are imposed to be done by the candidate purchaser.

a) Each contract has a concrete number given by the Notary and a composition date. This is the real estate identity number in combination with the transcription number given at the Registry office.

b) Report of the detail elements of the contracting parties, full names, father names, mother names, police identity (I. D.) numbers, tax registration numbers, addresses and professions.
c) The real estate is described in details (extent, limits, borders) and reports the Topographer of Engineers elements mentioned at the topographic diagram. At this point all the

previous acts, titles of property, contract numbers and registration numbers at the register office are mentioned.

d) Afterwards, is reported the vendors statement, that sells the real estate and is described the price, the terms and the conditions of settlement of price in case it is not paid off immediately during the signature of contracts.

e) The vendor guarantees that the sold real estate has no debts.

f) Thereupon, the buyer undertakes the vendor's real estate and the vendor resigns from any rescission right.

g) The notary reports the copies of tax on transfer of property statement as well as the declared value.

Note: The tax Office imposes the objective value (i.e. the minimum one) of the real estate apart from the agreed price. If the agreed price is over the objective value the transfer tax the purchaser pays will depend on the superior. If the agreed price is less than the objective value the tax is paid will depend on the objective value.

Finally the notary certifies that the transaction takes place according the law, and reports in brief the relative laws and the certain formal statements of the contracting parties. Observations:

1) The contract is drawn up only in Greek language in one original that always remains at the notary's file, an official copy which is registered at the register office and the purchaser receives as many copies as he/she wants paying the proportional tax. If the purchaser want, he/she may name a translator who takes an oath and translates orally word by word the contract from Greek to the foreigner language. At the end of the contract the translator declares that he/she translated rightly and comprehended completely quoted in the contract the foreigner purchaser and signs for this at the contract. Moreover the purchaser is able to receive a copy and on his own tax to have it translated officially at the Ministry of Abroad at the translational service or may have it translated from a Lawyer acquaintance of foreign language.

2) The parties sign only the prototype contract.

3) By the time the contracting parties sign must possess all the legal documents that would prove the individual identity or the legal representation of representative in case the purchaser is a company.

4) The expenses of Land registry burden the purchaser.

5) The transaction is completed not only with the procedure at the Notary but with the registration at the Register office.

THE LAND REGISTRY (KTIMATOLOGIO)

The Land Registry system has only recently been launched in Greece. Law 2308/1995 (last amended by Law 3212/2003) introduced the National Land Registry (Cadastre), which gradually replaces the system of Registries of Mortgages. The new system is structured in such a way that it is object- instead of person-related. In the context of the Land Registry system each real estate asset occupies a particular place in the National Cadastre. Each real estate asset can be specifically identified through the allocation of a unique 12-digit number (a 16-digit one for horizontal properties). From a property law point of view the legal status of real estate assets included in the Land Registry system is clarified and undoubted as regards the substantive legitimacy and validity of the registrations made. It should be mentioned that for the islands of Rhodes and Kos there is an operative Land Registry system, which dates back to the period of the Italian occupation

Since the Land Registry is a modern and better organized public registry for titles of all kinds of immovable property in Greece. Not every place in Greece has until now the new land registry office yet. In fact, most towns and villages in Greece still have their "House of Mortgages" (called Hypothykophylakion), which is the old public registry, an office which has ensured and continues to ensure everybody's rights over immovable property.

a) The land registry office is a data base of legal and technical information and descriptions for the accurate assessment of real estate property in Greece. It ensures legal

security and certainty regarding immovable property rights and obligations, so that every person of good faith is protected if he/she gives faith to the registrations.

b) The land registry office operates along side with the "House of Mortgages" in the same area

c) In some areas in Greece, where the land registry has been organized up to its final stage, every transaction, sale, purchase, mortgage etc. on real estate is ONLY registeres in this land registry (e.g. Chalkida, some places in the Athens area). In theory, all real estate owners SHOULD have already declared and registeres their property with the local land registry, where it already exists.

BUT there are still thousands of all kind of real estate properties (lands, lofts, apartments/condominiums, houses, undivided properties, inheritances, etc.) in above mentioned areas which are NOT been registered with the new land registry. What now?

a) It can be either that nobody has declared the property so far. In this situation the property is registered as "Property of unknown owner".

If you are the owner of such property, you have the right to file an action at the court against the organization of the land registry, in order to prove that the property in question is legally yours and that it should be registered in your name.

b) It can be that trespassers have declared the property as being their own property (worst case scenario). Those wrongdoers are attempting to take advantage of the lack of information of the real owners and are trying to make these 'forgotten' properties illegally theirs, but under the legal veil of the land registry.

If you are the owner of such property, you have to file an action at the court against that person, to prove that the property in question is legally yours and not theirs.

In both cases the time limit to file the action is 5 years from the time that the land registry office has started its full and exclusive operation in that area. If your domicile is outside Greece, the time limit is 7 years.

The time limits passed without filing an proper action?

Automatically you are loosing your property rights over the immovable property and you have only the right to claim fiscal compensation.

THE FEES

Lawyer: The fee is 1-2% of the agreed price, depending on the difficulty of his research.

Notary public. The fee is approx. 1-1,5% of the contract price plus a small sum for other duties and certificates.

Mortgage office: The fee is approx. 0,5% on the contract price, plus a small sum for other duties and certificates.

Land Registration fee. It is only 1‰ of the tax value, with a minimum of 35 euros for every property right. Yet registration at the Mortage Offices is about 4,75% of the price mentioned on the deed of purchase.

Real Estate Agent. The fee depends on the agreement among the estate agent and the purchaser It is usually 1-2% of the market value of the property. Any special agreement is valid.

Furthermore in purchasing a property in Greece, the buyer is burdened with an 8% Greek transfer tax on the purchase price up until the sum of euros 20.000,00 and a 10% Greek transfer tax on the purchase price greater than the sum of euros 20.000,00. There are exemptions to this Greek rule. First time buyers are exempt from the above Greek transfer purchase tax. Single adults are exempt from the Greek transfer purchase tax up to the amount of euros 200.000,00 and married couples are exempt up to the amount of euros 250.000,00.

Presently, the Greek government is examining the possibility of introducing a “uniform” Greek property tax in order to stimulate the Greek property market and simply the Greek property tax system.

The rule of thumb “buy low and sell high” is surely applicable in this case given the large discount in Greek property prices and taking into consideration the strong fundamentals such as the guaranteed sunshine, the beautiful Greek beaches and the close geographical proximity of Greece to major European cities.

SUBMISSION OF THE PROPERTY DECLARATION FORM E9 AT THE TAX AUTHORITIES

All tax payers, private persons, or legal entities, who hold a property right (full or bare ownership, servitude etc.) on a real estate asset in Greece as of 01.01.2005, irrespective of their nationality or residence, should file together with their tax return for the fiscal year 2005 the special property declaration form E9 with the local Tax Authority. The E9 statement can also be submitted through the electronic services of Taxis (www.taxisnet.gr). which is offered by the Secretariat-General for Information Systems of the Ministry of Economic Affairs and Finance.

The information, which is going to be used for the creation of an electronic Property Registry, includes: the location of the asset whether the property is agricultural land a plot whether it is within or outside the local survey plans an apartment a maisonette a villa a shop an office a hotel a factory etc, the covered area of the building the share in the case of joint ownership whether this property has been acquired through a will or parental; donation etc.

Since filling the E9 form can prove a tricky and complicated procedure for foreign owners, we suggest that you instruct a real estate lawyer or an accountant respectively.

Yet the most important part of the buying process is finding a property that feels like home..

Themistoklis E. Tsiakanikas
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Lanceurs d'alerte
(Whistleblower)
protections et limites

Dans une économie devenue de plus en plus trafiquante, et même d'un « nouveau capitalisme criminel » chacun peut se trouver être témoin de faits illégaux ou de conduite gravement immorale. Certains a leurs risques et périls osent briser le silence. On les nomme « lanceurs d'alerte » (concept de 1966 crée par Francis Chateauraynaud) ou en anglais « whistleblower » (notion née en 1863 en pleine guerre de seccession).

Le whistleblower est donc un employé ou un agent public qui dévoile à sa hiérarchie, aux autorités ou aux médias, une violation, une corruption, l'atteinte à des valeurs protégées (liberté, santé, protection de l'environnement etc..)

A ses yeux, dès lors que légalité et légitimité s'opposent, dès lors que la loi est perçue comme illégitime, la désobeissance est un devoir. La transgression prend pour nom « résistance ». Un pionnier David Thureau écrit dans « la désobeissance civile » (1849) : « la seule obligation qui m'incombe est de faire en tout temps ce que j'estime juste ».

Quelques exemples de lanceurs d'alerte : Paul Watson (cofondateur de Greenpeace) en lutte contre les baleiniers japonais, Hervé Falciani (de chez HSBC) ayant dénoncé les évadés fiscaux français, Robert Mazur, l'agent de douane ayant mis a jour les liens de la BCCI avec le trafic de cocaïne, Edward Snowden (de la NSA) aidé de Julian Assange (Wikileak) et ayant révélé le système d'écoute mondial de milliard d'individu par la NSA (National Security Agency, Bradley Manning ayant révèlé les exactions de l'armée américaine en Irak. Pour la France : Irène Frachon et la révélation du scandale du « Médiator », André Cicolella licencié de l'Institut National de Recherches et de Sécurité (INRS) en 1994 ayant revélé les effets toxiques de solvants utilisés dans les peintures, Denis Robert, ayant révélé le rôle de la banque Clearstream au cœur des paradis fiscaux, le journal de Mediapart et les affaires Bettencourt, Cahuzac, Karachi, Bygmalion, Kadhafi …

Il existe en France quatre lois protectrices des

lanceurs d'alertes : (1) La loi du 13 novembre 2007 qui protège les lanceurs d'alerte révèlant des faits de corruption, (2) la loi du 16 avril 2013 qui protège celui qui révèle a un employeur ou aux autorités des faits de danger pour la santé publique ou l'environnement, (3) la loi du 11 octobre 2013 qui protège les personnes du secteur privé ou public quant elles révèlent de bonne foi des faits de conflits d'intérêts. (4) la loi du 4 décembre 2013 qui protège les salariés de représailles lorqu'ils révèlent un crime ou un délit dont ils ont eu connaissance dans l'excercice de leurs fonctions.

Dans l'entreprise de règles protègent les lanceurs d'alertes agissant contre des actes : de discriminations (Art. L 1132-1 et L 1132-3) de crime ou délit (Art. L 1132-3-3) de harcèlement moral (L 1152-2) de harcèlement sexuel (Art L 1153-3) de corruption (Art. L 1161-1) contre la santé publique et l'environnement (Art. L 1351-1 code de la santé publique).

Dans chaque litige le juge doit arbitrer entre la légitimité de l'alerte, le caractère indiscutable de l'intérêt général défendu et la sincérité ainsi que le caractère désintéréssé des moyens mis en œuvre, précédé si possible d'un épuisement des outils internes dont peut disposer le lanceur d'alerte. Dans le cadre de l'entreprise, il sera facilement compris que la voie hierarchique ne pouvait être utilisée.

En contrepartie de ces règles existent aussi l'hypothèse d'une dénonciation calomnieuse (art. L 226-10 du Code Pénal) pour des personnes ayant lancé une alerte qui s'évèrerait sans fondement et faite de mauvaise foi, avec l'intention de nuire ou avec une connaissance, au moins partielle de l'inéxactitude des faits. L'auteur d'une fausse alerte peut être puni (5 ans d'emprisonnement et/ou 45.000 € d'amende) lorsque le destinataire est une autorité judiciaire ou administrative, un employeur ou un supérieur hiérarchique.

Ainsi existe t-il en France un droit à dénoncer une infraction parfois habillée des apparences de la légalité (émanant d'une autorité légale) en invoquant « une exception de citoyenneté » comme un fait justificatif de la désobeissance. Quelques jurisprudences ont validé de telles actions mais Il est encore trop tôt pour connaître précisément les applications que connaitront ces règles dans la vie et les décisions de justices.

Les résistances aux lanceurs d'alertes sont encore fortes. Ainsi la loi de 2007 et la dénonciation de faits de corruption : M. Lionel Bénaiche (secretaire général du service central de prévention de la corruption SCPC) relève qu'il n'existe encore aucune jurisprudence fondée sur cette loi (art. L 1161-1) bien que son service a été alerté a de très nombreuses reprises de faits de menaces et de représailles.

A whistleblower is a person who exposes misconduct, alleged dishonest or illegal activity occurring in an organization. The alleged misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health and safety violations, and corruption.

Whistleblowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues). (extract from Wikipedia).

About the situation in France and recent rules to protect the whistleblower.

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Gesellschaftsrecht Österreich: Das Verbot gegen die Einlagenrückgewähr - Rechtsfolgen und Auswirkungen auf die Praxis kreditgebender Banken

Da das Vermögen der Kapitalgesellschaften (Aktiengesellschaften und Gesellschaften mit beschränkter Haftung) einziger Haftungsfonds für die Gläubiger ist, will das österrei-chische Kapitalgesellschaftsrecht die Gläubiger vor unsachgemäßem Kapitalausfluss aus der Gesellschaft schützen: Das Stammkapital soll vor der Schmälerung durch die Gesellschafter gesichert werden. Demnach haben die Gesellschafter nur Anspruch auf den

Bilanzgewinn; die geleisteten Einlangen dürfen Ihnen nicht zurückgezahlt werden.

Das Einlagenrückgewährverbot ist zwingend. Es kann nicht durch Gesellschaftsvertrag oder durch sonstige Vereinbarungen abbedungen werden. Es gilt auch für Vermögens-verschiebungen zu Gunsten eines Alleingesellschafters.

Im Gegensatz zu den deutschen Kapitalerhaltungsvorschriften stellt das österreichische Gesellschaftsrecht nicht rein auf den Erhalt des Stammkapitals ab, sondern auf das ge-samte Gesellschaftsvermögen.

Unter das Verbot der Einlagenrückgewähr fallen somit sämtliche Zuwendungen und Ver-günstigungen aller Art an die Gesellschafter oder diesen nahestehende Dritte. Nicht nur offene Verletzungen des Einlagenrückgewährverbots sind erfasst. Allgemein anerkannt ist, dass auch Vermögenszuwendungen der Gesellschaft an ihre Gesellschafter unter-sagt sind, die den Gesellschafter aufgrund seiner Gesellschafterstellung zu Lasten des Gesellschaftsvermögens begünstigen. Erhält ein Gesellschafter von der Gesellschaft im Rahmen eines Vermögenstransfers mehr als den angemessenen Gegenwert, besteht somit ein objektives Missverhältnis zwischen Leistung und Gegenleistung zu Gunsten des Gesellschafters und zu Ungunsten der Gesellschaft. Eine unzulässige Ausschüttung liegt vor, sofern die Gesellschaft das Geschäft nicht auch mit einem Dritten in dieser Form abgeschlossen hätte. Das Geschäft muss einem sogenannten Fremd- bzw. Dritt-vergleich standhalten.
Das bedeutet, dass sie jede nicht betriebsbedingte und sachlich nicht gerechtfertigte Vermögensverschiebung unter das Verbot der Einlagenrückgewähr fällt.

Als Rechtsfolge des Verstoßes gegen das Verbot der Einlagenrückgewähr ist das Rechtsgeschäft, aufgrund dessen die Gesellschaft an einen Gesellschafter ohne gleich-wertige Gegenleistung leistet, absolut nichtig. Die Gesellschaft hat daher einen bereiche-rungsrechtlichen Rückforderungsanspruch gegen den Gesellschafter sowie einen ver-schuldensabhängigen Schadenersatzanspruch gegenüber die Organe der Gesellschaft (Geschäftsführer, Vorstand, gegebenenfalls Aufsichtsrat), die der Gesellschaft solida-risch haften.

Die österreichische Rechtsprechung hat sich bereits häufig mit Sachverhalten auseinan-dergesetzt, die sie unter den Tatbestand der verdeckten Einlagenrückgewähr subsumiert hat:

- So ist zum Beispiel der Ankauf einer Liegenschaft durch die Gesellschaft von ih-rem Gesellschafter zu einem überhöhten Kaufpreis oder der verbilligte Verkauf einer Liegenschaft an den Gesellschafter wegen des Verstoßes gegen das Ein-lagenrückgewährverbots unzulässig.
- Ebenso die Bezahlung unangemessen hoher Miet- oder Pachtzinse an den Ge-sellschafter durch die Gesellschaft.
- Geschäftsführergehälter und Pensionszusagen sind überhöht, wenn Sie bei ver-nünftiger wirtschaftlicher Betrachtungsweise einem Fremdgeschäftsführer nicht gewährt worden wären.
- Übernimmt die Gesellschaft Schulden des Gesellschafters oder verzichtet die Gesellschaft auf Forderungen gegen den Gesellschafter, liegt ebenfalls eine ver-deckte Einlagenrückgewähr vor.
- Auch indirekte Zahlungen aus Bürgschaften und Bestellung von sonstigen Si-cherheiten wie Hypotheken für Kredite des Gesellschafters sind verboten, wenn sie ohne betriebliche Rechtfertigung erbracht werden.

Vom Zweck dieser Kapitalerhaltungsvorschrift sind nicht nur aktuelle, sondern auch ehemalige und zukünftige Gesellschafter erfasst wenn die Leistung der Gesellschaft im Hinblick auf ihre ehemalige oder künftige Gesellschafterstellung erfolgt. Auch nahe An-gehörige von Gesellschaftern sollen nach Literaturmeinungen vom Einlagenrückgewähr-verbot sein. Umstritten ist allerdings, wer naher Angehöriger in diesem Zusammenhang sein soll. Leistungen an Konzerngesellschaften sind

ebenfalls vom Verbot der Einlagen-rückgewähr erfasst. Darunter fallen Gesellschaftern, die mit dem Gesellschafter des wirt-schaftlich ident angesehen können, wie z.B. Leistungen an Unternehmen, an denen der Gesellschafter mittelbar oder unmittelbar beteiligt ist. Auch Leistungen an Schwesterge-sellschaften bzw. Leistungen an Gesellschafter des unmittelbaren Gesellschafters fallen darunter.

Das Verbot der Einlagenrückgewähr richtet sich grundsätzlich nur an die Gesellschafter und an die Organe der Gesellschaft. Gesellschaftsfremde Dritte sind vom Gesetzeswort-laut nicht erfasst. In der Lehre anerkannt und vom Obersten Gerichtshof judiziert ist je-doch, dass Dritte bei Vorliegen bestimmter Voraussetzungen ebenfalls zum Rückersatz des Erhaltenen verpflichtet sind.

Nach der Rechtsprechung schlägt das Verbot der Einlagenrückgewähr - neben den Fäl-len der Kollusion (unerlaubte Zusammenwirken mehrerer Beteiligter mit der Absicht, ei-nen Dritten zu schädigen) - auch dann auf das Rechtsgeschäft mit dem Dritten durch, wenn das Vertretungsorgan (Geschäftsführer, Vorstand) zum Nachteil der Gesellschaft und zugunsten des Gesellschafters handelt und der Dritte davon wusste oder sich der Missbrauch ihm geradezu aufdrängen musste. Das Rechtsgeschäft mit dem Dritten ist dann aufgrund des Fehlens der Vertretungsmacht des Vertreters der geschädigten Ge-sellschaft unwirksam.

Dritten, die mit der Gesellschaft Rechtsgeschäfte abschließen, trifft somit gewisserma-ßen eine Nachforschungspflicht, dahingehend, ob die erbrachten Leistungen auch tat-sächlich der Gesellschaft und nicht den Gesellschaftern zugutekommen.

Diese Rechtsprechung hat in der Praxis vor allem für Banken, die Gesellschaften Kredite gewähren oder Sicherheiten von Gesellschaften entgegen nehmen, massive Auswirkun-gen.

Gewährt die Gesellschaft dem Gesellschafter ein Darlehen, fließt ein Teil des Gesell-schaftsvermögens, das den Gesellschaftsgläubigern als Haftungsmasse dient, an den Gesellschafter zurück. Hält das Darlehen einem Dritt- bzw. Fremdvergleich nicht stand, liegt eine verbotene Einlagenrückgewähr vor. Auch wenn die Gesellschaft für einen Kre-dit des Gesellschafters, den dieser bei einem dritten Finanzierer (etwa einer Bank) auf-nimmt, Sicherheiten bestellt, kommt es zu einer Verminderung des Gesellschaftsvermö-gens, die unter das Verbot der Einlagenrückgewähr fallen kann, wenn gewisse Kriterien nicht erfüllt sind. Dies hat nicht nur Auswirkungen auf das Verhältnis zwischen Gesell-schaft und Gesellschafter, der zum Rückersatz der verbotenen Leistung verpflichtet ist. Unter Umständen ist auch die Sicherheitenbestellung für das finanzierende Kreditinstitut nichtig.

In einer Entscheidung 2011 (6 Ob 29/11z, 14.9.2011) hat der Oberste Gerichtshof klar-gestellt, dass es ausreicht, wenn der Bank aufgrund der verdichteten Verdachtslage be-kannt sein musste, dass die beteiligten Gesellschaften unter einheitlichem Einfluss ste-hen. Dabei ging es um eine Bank, der von der Gesellschaft zur Besicherung von Kredi-ten eines ihrem Gesellschafter nahestehenden Dritten ohne erkennbare betriebliche Rechtfertigung ein Pfandrecht bestellt wurde. Nach der rechtlichen Beurteilung des Obersten Gerichtshofs hätte sich hier der Verdacht einer Einlagenrückgewähr mit an Gewissheit grenzender Deutlichkeit aufdrängen müssen. Die Bank hätte die Rechtferti-gung hinterfragen und Nachforschungen anstellen müssen. Die bestellte Sicherheit war in diesem Fall daher unwirksam vereinbart und konnte von der Bank nicht in Anspruch genommen werden.

Herauszuheben ist auch die aktuelle Rechtsprechung zum Thema Akquisitionsfinanzie-rung und Einlagenrückgewähr bei Kreditaufnahme und Besicherung durch die Gesell-schaft zur Finanzierung des Anteilserwerbs des Gesellschafters:

Der Erwerb von Anteilen an einer Gesellschaft (GmbH oder AG, oft Zielgesellschaft ge-nannt) kann oftmals nicht aus den Eigenmitteln des neuen Gesellschafters finanziert werden. Der

Erwerber ist regelmäßig auf Finanzierungen beispielsweise durch Aufnah-me eines Kredits angewiesen. Problematisch aufgrund des Einlagenrückgewährverbots wird eine solche Finanzierung, wenn zur Finanzierung des Erwerbs der Anteile an der Zielgesellschaft das Vermögen der Zielgesellschaft herangezogen wird.

Der Grundsatz lautet: Die Zielgesellschaft darf den Anteilserwerb nicht finanzieren. So hat der Oberste Gerichtshof ausgesprochen, dass gegen das Verbot der Einlagenrück-gewähr auch dann verstoßen wird, wenn bei einer M&A Transaktion das Kaufobjekt (die Zielgesellschaft) nicht bloß eine fremde Verbindlichkeit (den Kredit zur Finanzierung des Anteilserwerbs) sichert, sondern selbst einen Kredit aufnimmt, um dem Käufer die Mittel für den Anteilserwerb zur Verfügung zu stellen.

Anderes kann nur dann gelten, wenn die allgemeinen Voraussetzungen der zulässigen Darlehensgewährung an Gesellschafter vorliegen. Unter Umständen können der Zielge-sellschaft durch den Anteilserwerb Vorteile erwachsen, etwa wenn der Zielgesellschaft dadurch neue Märkte eröffnet werden oder besondere Synergien auftreten. Das Rechts-geschäft kann also unter Umständen durch eine betriebliche Rechtfertigung zulässig sein.

Erfüllt die Finanzierung bzw. Besicherung des Anteilserwerbs jedoch den Tatbestand des Verstoßes gegen das Verbot der Einlagenrückgewähr und liegt Kollusion oder grob fahrlässige Unkenntnis der finanzierenden Bank vor, da sich dieser der Missbrauch na-hezu aufdrängen musste, besteht gegenüber der Bank ein Leistungsverweigerungsrecht. Die Nichtigkeit des Rechtsgeschäfts kann der Bank also erfolgreich entgegengehalten werden.

Seit der neueren Judikatur (6 Ob 48/12w, 20.3.2013) steht fest, dass die Bank nicht ein-mal einen bereicherungsrechtlichen Rückforderungsanspruch der ausgezahlten Kredit-valuta hat, da dies nach Ansicht des OGH nicht mit dem Verbotszweck des § 82 GmbHG bzw. § 52 AktG vereinbar wäre.

Das Thema der verbotenen Einlagen-rückgewähr ist ein sich ständig weiterentwickelndes Rechtsgebiet, das für die Praxis von immer größerer Relevanz ist.

The shareholders of corporate entities such as limited liability companies (in Austria: Ge-sellschaft mit beschränkter Haftung GmbH) and stock corporations (in Austria: Aktieng-esellschaft, AG) may claim the net annual profits, but according to austrian capital main-tainance rules they must not reclaim their capital contribution which is the only liability fund for creditors. The prohibition of return of capital contribution provides creditors pro-tection by law.

If a shareholder commits an offence against the prohibited return of capital contribution he or she is obliged to reimburse to the company what he or she received as benefits.

A clear offence against the prohibition of return of capital contribution occurs when the shareholder receives benefits from the company without any counter performance. Not only clear offences but also hidden infringements against capital maintainance rules are prohibited. The company therefore must not pay the shareholders debts, or purcha-ise/rent real estates (for example) from the shareholder at excessive prices, or provide any securities for loans of the shareholder.

According to austrian juristiction, banks have to question who in fact benefits from given loans, if there are reasons for suspecting a breach of capital maintainance rules. If the bank by carelessness overlooks the offence against the prohibited return of capital con-tribution the transaction with the company is invalid.

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France:
Introduction of the consumer class action

On October 1, 2014, the law introducing the class action (Law No. 2014-344 dated 17 March 2014 in connection with Decree No 2014-1081 dated 24 September 2014) came into force in France. Several consumers are entitled to claim damages before the competent district court for the same violation of statutory or contractual obligations. However, they have to be represented exclusively by consumer national organizations, which have been certified by the State. In other words, only consumer national organizations with state accreditation may initiate the class action. This representation duty is meant to prevent the French class action from developing excessively and from becoming an American-like class action. The French class action can be also based upon the legal violations resulting from restrictions on competition provided by Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and the corresponding provisions of the French commercial code.

With regard to individual cases the judge decides under a first step decision on the liability of the company and determines the extent of damage. Both publicity measures and modalities for joining the class action shall be laid down in this first decision. It allows a more complete group of concerned consumers to be built up. Should the consumers not receive compensation after this first stage of the proceedings by the professional defendant, the judge may then grant an enforcement title in a second step decision in favor of the demanding consumer organizations acting on behalf of the consumers concerned. Only pecuniary loss resulting from material damage can be repaired through the class action. Any non-pecuniary losses, such as losses resulting from bodily injury or environmental damage are excluded from the scope of the class action.

Up to now, the media reported about four class action lawsuits initiated by national consumer organizations. Three cases relate to the real estate sector. One concerns the insurance industry. However, it is expected that other economic areas may be concerned since the business to consumer liabilities are subject to numerous national and European regulations.

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