

## Doing business in Greece



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### What role does your firm play in assisting clients with due diligence processes for real estate investments, especially in relation to zoning, land use regulations, and building permits?

AKL Law Firm's unique approach to legal due diligence for real estate transactions combines title and planning reviews to ensure well-informed decisions for investors.

A legal due diligence typically revolves around the title review, which is performed at the relevant land registry or cadastral office and is aimed at confirming the seller's ownership, as well as identifying any encumbrances or legal defects on the desired property such as mortgages, servitudes, long-term leases, lawsuits, or seizures. However, at AKL we stress the importance of confirming the suitability of the asset through a technical due diligence; to this end, we collaborate closely with technical advisors, primarily engineers, to assess the property's spatial and urban planning status, known as its 'planning identity'. This entails determining if the property falls within or outside an urban area, validating the legality of existing structures, identifying permitted land uses, and assessing applicable building terms and restrictions. We also evaluate any limitations imposed by special legislation on forests and forest expanses, cultural heritage, nature conservation areas, foreshore and beach zones, etc.

Based on our professional experience, we tend to prioritise the planning review whenever feasible, as it offers a more prompt and efficient assessment of the property's suitability for the prospective investment. This is especially true for greenfield developments, which tend to be more challenging.

### What are the current challenges and opportunities for foreign investors looking to enter the Greek real estate market, and how can your firm provide guidance and solutions?

In Greece, limitations to potential developments do not derive only from the law, but also from case law on the interpretation of existing legislation; such limitations are often not fully applied by licensing authorities, especially the planning authorities. This complexity is exacerbated by the intricate and fragmented nature of Greek legislation, which leaves room for discretionary interpretation by administrative bodies, not always aligned with that of the courts.

Consequently, a project may receive authorisation even if it fails to meet the requirements established in case law, leaving it susceptible to potential legal challenges. It is worth noting that the statutory time frame for submitting a petition for annulment by anyone with a legitimate interest does not commence from the issuance date of the building permit, but from the date of knowledge thereof. Therefore, it is evident that mere authorisation by the administrative body is neither sufficient nor absolute. Such licensing must be preceded by a meticulous planning review, taking into account the contemporary legal perspectives in these matters. AKL's real estate practice is known for identifying potential risks, not only by keeping up-to-date with current legal developments, but also through its long-standing exposure with interdisciplinary teams and participation in industry boards.

### How has the current legal landscape in Greece impacted foreign investors' ability to do business in the real estate sector?

The current legal landscape in Greece has considerably impacted foreign investors' ability to conduct business in the real estate sector, especially in non-urban areas. Key challenges have arisen from the case law of the Greek Council of State, which has taken a cautious approach towards permitting extensive development in such areas.

First and foremost, the Council of State has consistently ruled that all plots in non-urban areas (regardless of the date they were formed), must possess a frontage on a common-use area, typically a public road, in order to be buildable. This requirement has been further reinforced by a recent decision of the court's plenary session. Additionally, since 2014, the court has insisted that these roads must have been officially designated as public by means of a presidential decree, a condition often unmet in practice.

Furthermore, the court has adopted a rigorous stance when evaluating major deviations from general building restrictions in non-urban areas, even when these deviations are introduced through special planning tools like Special Spatial Plans and Special Spatial Development Plans for Strategic Investments ('ESCHASEs').

Last but not least, the Council of State has heightened scrutiny when assessing the legality of large-scale projects, particularly on heavily developed islands (such as Mykonos and Paros in the Cyclades), by demanding

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comprehensive justifications for their compliance with the area's carrying capacity. This has led to the frustration of significant investment endeavours in cases where this condition was deemed not fulfilled.

### What are some key changes or updates in Greece that could affect real estate transactions and investments?

In light of the aforementioned issues, the matter of designating the road network is anticipated to be resolved through the issuance of the general urban-planning decrees (namely, the Local and Special Spatial Plans). A large part of the relevant studies has been commissioned by the Ministry of Environment and Energy and is presently in the process of preparation, yet their specific contents remain undisclosed. Moreover, there is a lot of speculation on whether the government will attempt to enforce an 'interim' solution, but unfortunately, no specifics have been revealed on this matter either.

Lastly, to address the prevailing ambiguity concerning the carrying capacity issue and to give potential investors a higher level of trust, a provision was recently enacted, whereby the mechanism for assessing carrying capacity is to be determined by a relevant presidential decree. This decree will delineate the methodology for evaluating carrying capacity, along with its fundamental key factors. Nevertheless, the anticipated release of this presidential decree has not yet occurred, and its details remain unknown.

### Has the increasing importance of sustainability and green initiatives in real estate been adopted in Greece by legislators and investors alike?

Sustainability is an increasing concern on a global scale, with particular prominence within the EU. Given its inherent ties to space and the environment, the real estate industry is not an exception to this evolution; the legislative framework governing real estate encompasses not only urban-planning regulation, but also environmental legislation.

Of particular importance are the matters pertaining to special environmental studies that are currently under development for various regions across the country. Furthermore, ministerial decisions delineating the conservation objectives for environmentally protected areas of the Natura 2000 network constitute a foundational component of this legal framework. In tandem with these measures, the New Building Regulation (Law No. 4067/2012) aims at facilitating urban planning incentives, thereby encouraging the construction of buildings that actively contribute to the sustainability of urban environments.

Finally, foreign investors place a distinct emphasis on the integration of innovative and sustainable technologies into ongoing construction projects, helping to mitigate the ecological footprint of the real estate sector. ■

