



## LEGAL BRIEFING – Real Estate

by [Helen Alexiou](#), [Eleftheria Vassila](#) & [Tomasz Konrad Juszczak](#)

### Just in – The new law on strategic investments

I'm afraid this briefing will not include literary quotes.

This briefing is about a matter that is close to my “heart” (my business heart, that is) and I feel it deserves its own mention.

The institution of strategic investments is an extremely useful planning tool, the recourse to which I often suggest to clients interested in complex greenfield developments. Another matter close to my heart.

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[h.alexiou@aklawfirm.gr](mailto:h.alexiou@aklawfirm.gr)

On 30.11.2021, the draft bill of the Ministry of Development and Investments entitled “*Strategic Investments and improvement of the investment environment through the acceleration of procedures in private and strategic investments and the creation of a legal framework for technology spin-offs*” was voted by Parliament, officially becoming Law 4864/2021 (Government Gazette A’ 237/02.12.2021). We will be looking at Part A of the Law, which aims at unifying, clarifying but also ameliorating the legal framework on Strategic Investments represented by Laws 3894/2010 (Government Gazette A’ 204/2010) and 4608/2019 (Government Gazette A’ 6/2019).

For those not familiar with the strategic investments’ legislation, allow me to point out that since May 2019 and until the enactment of the new law, the law provided -and the authorities acknowledged- two different sets of rules, which applied concurrently to strategic investments, depending on the time of submission of the relevant application (for the award of “strategic investment status”). Both sets had some advantages but also some issues that were concerning, which the new law attempts to address and reconcile. Let’s have a look at some of the most important changes.

## **A. Categories (art.2)**

The five main categories of Strategic Investments are enriched with additional and more elaborate sub-categories, while the consideration criteria as to the required budget and new job positions to be created are, in some cases, lowered. Special mention to the new subcategory under “Strategic Investments 2” related to investing in contemporary economic activities including biotechnology, robotics, medical tourism, waste management, digital reformation and cloud computing (art. 2§1.b.a), for which even more favorable consideration criteria are set. Moreover, a 25% reduction on budget requirements is offered for all Strategic Investments realized in regions integrated into the so-called “*Just Transition Territorial Plans*” (ESDIM) to boost their development.

## **B. New provisions**

1. Pursuant to article 3 of the new law, environmental licensing is implemented by central services of the Ministry of the Environment and Energy, even for smaller-scale Strategic Investments falling under Category B of Law 4014/2011 (on environmental licensing) for which no operation permit is required.
2. Article 5 provides that the concession of foreshore and beach zones for the development of Strategic Investments is also possible when envisaged by a Special Urban Plan.
3. Article 6 extends the incentive of fast-track licensing beyond the main Strategic Investments to the ancillary and accompanying works of external infrastructure.
4. Pursuant to article 7, the rule of a required undivided expanse is reshaped in respect of the issuing of a Special Plan for the Spatial Development of Strategic Investments (ESCHASE). It is established that the investment may also stretch over one non-neighboring area, provided that this area a) covers less than 50% of the main property’s surface; b) is not necessary for the main property’s integrity and buildability; c) is located at a distance of less than 1,5 km away from the main property. Moreover, an ESG commitment and an annual sustainability reporting obligation is introduced for investors.
5. To further catalyze the fast-track implementation of their Strategic Investments, investors are encouraged (article 9) to issue the necessary environmental permits and approvals utilizing the Register of Certified Assessors of art. 16 of Law 4014/2011, who are private assessors destined to provide relief to the competent administrative authorities.
6. Article 10 of the new law introduces special forms of state funding (grants, subsidies for the leasing of equipment and employment costs) for the category of “Emblematic Investments of Exceptional Importance” (developed by distinguished legal entities and promoting innovation, technology, green economy and low energy and environmental footprints through sustainable real estate investments, green hydrogen production etc.). The primary source of state funding shall be the Recovery and Resilience Facility. A condition to be fulfilled is the completion of the project by 31.12.2025.

7. Article 15 provides that, for intended changes to their investment plan, investors shall notify the Directorate General of Strategic Investments of the Ministry of Development, which shall assess their nature as material or immaterial and suggest the necessity of a new decision by the Interministerial Committee on Strategic Investments (DESE) for the project to be re-approved as a Strategic Investment.

*Note: When the relevant Bill was submitted for public consultation, it was explicitly defined that the transfer of the totality of an approved Strategic Investment to an affiliate of an original strategic investor constitutes an immaterial change to the investment plan and does not require a new decision by DESE. This specification, however, did not make it into the new Law.*

8. According to article 18, the audit of approved Strategic Investments is entrusted to certified accountants and accounting firms listed in the public register of art. 14 of Law 4449/2017, as opposed to the special register previously envisioned in Law 4608/2019.

9. Through an amendment of Law 3986/2011, the list of land uses that may be granted by an ESCHASE is supplemented with the special land uses of film studios and data centers (article 23).

10. Article 24 introduces a simplified process for the change in the boundaries of an ESCHASE. The relevant amendment completes through a joint decision of the competent bodies of the Ministries of Development and Investments and the Environment and Energy, on condition that the increase or decrease of its area does not exceed 20% – as opposed to the former 15% – of its original area and, for tourism and recreation zones, that an increase in the number of beds does not exceed 20% of their original number.

11. Article 26 clarifies that condo hotels (previously allowed only in urban areas) can be developed in the tourism and recreation zones of Organized Receptors of Tourist Activities which have been approved by means of an ESCHASE.

12. Pursuant to article 27, strategic investments are no longer exempted from the obligation to issue pre-approvals of building permits where required. To speed up the issuance of the pre-approvals, the relevant competence is transferred from the local Building Services to the Directorate General Strategic Investments of the Ministry of Development and Investments.

### **C. Notes**

1. Apart from the above changes, it is observable that the provision of art. 21§4 of Law 4608/2019, stating that the total time for the issuance of all necessary permits for the development of a Strategic Investment may not be longer than 3 years, did not survive in the new Law. Curiously enough, this provision had been included in the draft Bill submitted for public consultation on 26.08.2021.

2. Finally, in the transitional provisions of the Law (art. 29), it is stipulated that, with one minor exception, the new regulations governing the approvals issued by DESE, the realization



of a Strategic Investment and dispute resolution shall also apply to the projects that have been approved as Strategic Investments or for which an application has been filed before Enterprise Greece S.A. in accordance with Laws 3894/2010 and 4608/2019. Arts. 23 and 24 (see above) of the new Law shall also apply to pending applications filed under Law 4608/2019. In addition, for all pending applications, investors may modify them in order to fall under one of the categories of art. 2 of the new Law and enjoy the proposed incentives.

As a final note, I'd like to stress that for us, legal advisors, a unified and systematic legal framework is always a pleasant surprise.

