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LEGAL BRIEFING – Real Estate

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Greenfield Developments – To dare or not to dare?

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Let's face it. Greece is -still- not considered as an investor-friendly environment for greenfield developments. Every single plot of land comes with a different set of challenges, and it takes a very special kind of investor to not give up in the face of adversity – both actual and perceived.

The heart of the problem may lie in the complexity and multiplicity (although *"disarray"* might be a more appropriate word) of the legislation regulating non-urban areas. It may lie in the views of the Council of State, the highest administrative Court in Greece, which has more or less ruled that non-urban areas are not meant to be built[1]; instead, they are meant to be used for agriculture and passed on to the next generation. But what about greenfield developments which are crucial to the Greek economy and lie outside of city boundaries?

The Greek legislation acknowledges the need for special plans and in fact provides several alternative options: special urban plans for projects of a regional scale (*"EPS"*[2]), special spatial plans for strategic investments (*"ESHASE"*[3]), plans for areas of large-scale touristic developments (*"POTA"*), and other similar planning tools[4]. However, the legislation for such exceptions is not exhaustive and, eventually, recourse to the general rules for non-urban areas becomes inevitable. But such general rules

[1] Indicatively, Council of State decision No 806/2010.

[2] Special Urban Plans (in Greek, "Eidika Poleodomika Sxedia" or "EPS") are regulated by art. 8 of law 4447/2016, as recently amended by law 4759/2020.

[3] Special Spatial Plans for Strategic Investments (in Greek, Eidika Sxedia Xorikis Anaptyxis Stratigikon Ependyseon" or "ESXASE" are provided in art. 11 of law 4068/2019 and art. 24 of law 3894/2010.

[4] Such areas (in Greek," Perioxes Oloklиromenis Touristikis Anaptyxis" or "POTA") are provided in art. 29 of law 2545/1997.

are consistent with the inherent restrictions of agricultural land, and are definitely not suitable to any modern development.

Law 4759/09.12.2020 represents the government's first (albeit hesitant) attempt to tackle the issue. It appears to differentiate between "stricto sensu" non-urban areas, and areas which are subject to some form of planning -including the planning tools described above (EPS, ESHASE, POTA).

However, this differentiation is mostly theoretical (if not philosophical), to the extent that the provisions of the law are only indicative and the legal framework of the aforementioned special plans is rather general. Other critical pieces of legislation, such as the Building Regulations (*"NOK"*), have not been amended accordingly and instead continue to make the only widely-accepted distinction between urban and non-urban areas. Obviously, the distinction made in the new law is significant, in the sense that it offers the Greek courts argumentation for a shift in case-law, which would acknowledge that there is, indeed, a third category: The regulated non-urban areas. The elephant in the room.

The elephant that hosts most of the greenfield projects in Greece.

Which leads us to my go-to example for pretty much any planning issue over the past decade: The Hellinikon. This € 8-billion project involves the development of a 1,500-acre area located right on the Athens coastal front. According to law 4062/2012 for the development of the Hellinikon, the area is destined for the development of an international hub, which will showcase Athens as a cultural metropolis, a touristic destination of international acclaim, and an important center of economic development, education and research, which will contribute to the country's financial and development goals. You would assume that provisions intended to limit the development of non-urban (read, "agricultural") land would not apply for the Hellinikon.

You would be wrong.

Approximately half of the total area will not be integrated into the city plan and, without specific provisions, the general rules for non-urban areas would apply. I do not mean to imply that the Hellinikon will be implemented by reference to unsuitable provisions. Nor that this is the case for all the other special plans, which are currently going forward throughout the country. However, as these developments progress, the lack of appropriate rules becomes evident and, unfortunately, prominent. Sometimes, the Council of State recognizes the inadequacy of the provisions and is ready to overcome such obstacles with creative argumentation. When that is not possible, the investors have to wait for the necessary amendments to the applicable regime, which results in delays affecting all aspects of the project, from financing to partnership.

Hence the question: To dare or not to dare?

To answer this question, I would like to draw from the wisdom of New-York real estate guru, Bruce Stachenfeld, and his well-known article *"You will never find a good deal again":*

"[...] Consider – does your job consist of sifting through emails and setups from brokers trying to figure out if it is a "good" deal, while another 999 people do the same thing?

Do you really think you will be better at evaluating a "good" deal than the other 999 people, and you will therefore outperform? […]"

Probably not. It is the time for creative thinking, perseverance and a clear vision. This is the essence of a good deal, this is what keeps innovative projects going, this is what makes greenfield developments complete.

It takes a special kind of investor to make them happen. But they are possible, and potentially lucrative. And they're yours for the taking.