Client: Mayer Brown
Source: The Times (Main)
Date: 25 June 2015
Page: 63
Reach: 390962
Size: 368cm2
Value: 11216.64

What are Grexit's legal attributes?

The monster created by a Greek exit would roam in 'unprecedented territory', say City observers. **Edward Fennell** reports

It has been a taxing week for everyone involved, however peripherally, with the Greek financial crisis. Aside from the politicians and the eurocrats around the eurozone, any business or bank with transactions in the land of Odysseus has been left wondering where this journey will take them next. In particular, they have wanted to understand more about the legal attributes of the monster Grexit.

"It's a legal mystery," admitted a lawyer from a top City firm earlier this week. Another described Grexit as "a legal fog". A third observed simply that that Grexit roams "in unprecedented territory". In other words, no one quite understands the full perils, legally, which would face the business world if Grexit were to materialise. And while it may have been deflected temporarily, there is no guarantee that it won't return without a proper agreement on long-term Greek debt relief.

If Grexit were to reappear somewhere down the line, says Edmund Parker, of Mayer Brown's banking and finance practice, everything would hinge on whether it was "an orderly or a disorderly withdrawal". Given the Tsipras government's maverick tendency it is not inconceivable that Greece might walk away unilaterally, in the last eventuality, from all negotiations.

In that case, anything might be possible. "In the worst case for Greek deals, if the currency was redenominated in drachmas and capital, and exchange controls were imposed, then the government might make it illegal for transaction parties to make payments in anything other than new drachmas. That can be a greater problem where the place for payment is Greece," Parker says. The implications of this are almost too far-ranging to contemplate. A feature of a disorderly Grexit would be the likelihood of conflict between Greek, European and international law, says Christian Leathley, of Herbert Smith Freehills. And legal opinion is divided on some key issues. For example, some lawyers suggest that bilateral investment treaties (BITs) would be vital in resolving losses. Others suggest that BITs would have no value at all. And as Ashley Katz, co-head of Mayer Brown's restructuring, bankruptcy and insolvency group observes, standing behind this crisis is the well-established legal principle of *lex monetae*. This asserts the right of a sovereign state to choose its own currency and to determine the conversion rate to its previous currency. Yet as Edmund Parker points out, this would make a nonsense of most international deals, which are likely to be denominated in euros and very often subject to English law. "An English court would likely uphold the terms of a well-drafted original contract," he says. "But armed with an English judgment, how far would you get if you then had enforce it in Greece where the government had declared it illegal?"

All of this, so far, is speculative but it is significant that hard-headed lawyers have started to contemplate such exotic scenarios. As Yannis Manuelides, of Allen & Overy, says, companies involved in long-term projects are probably trapped in whatever eventuality might overtake the Greek economy. Everyone else should try to mitigate the situation. For Christian Leathley, the first priority for businesses should be to check out the details of their contracts on any Greek transaction: "The way the contract denominates the currency is vital."

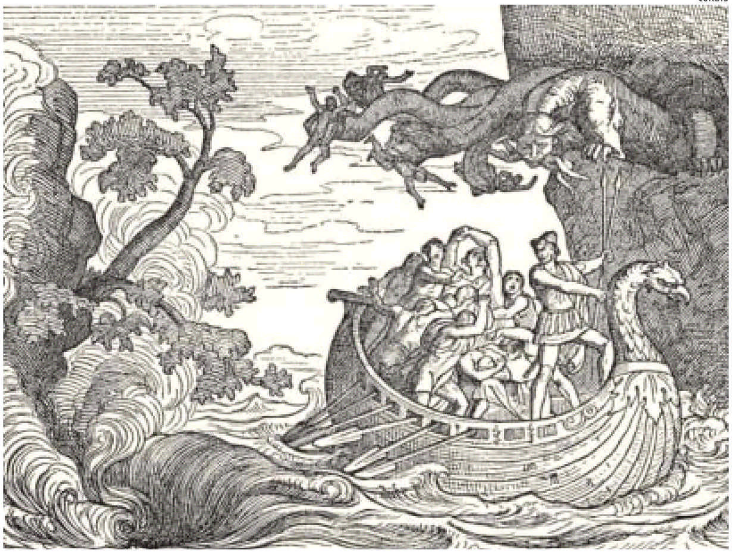
If worried, businesses should consult with their lawyers on whether there is any wriggle room — and if there is scope for getting out of a deal that is looking wobbly then it is essential to observe to the letter the way it is done. Also check out any arbitration clauses that might offer some relief further down the road, advises Guy Davies, of shipping law firm Davies Battersby. "Under the New York convention arbitration decisions can be enforceable in many places around the world."

In practice, terms of trade have already changed dramatically in Greece. "It's largely a cash economy with cash up front for most deals," Katz says. And following the crisis of 2013, Manuelides says, most banks have adjusted their position to minimise the threat. "There's not the same level of anxiety among banks as there was three years ago," he says. "We've done a number of deals involving Greek clients in anticipation of this situation and they've been insulated through the use of English law. Corporate loans can be made through UKbased special purpose vehicles and cash flow assembled in London."

As a result, Manuelides says, most non-Greek banks have collateralised their exposure to Greek developments. "Meanwhile, there's been a balkanisation of the banking system so that Greek banks are now lending purely to Greek customers."

None of this suggests that the Greek government will be any more successful in raising taxes or stimulating growth. The government may have got its loan this week. But the fundamental problem — that Greece should never have been permitted to join the euro in the first place — has scarcely been touched.

What is likely to happen, say lawyers, is that if the worst does happen "there will be a fire sale of Greek assets and investments". And the most likely investors? The Russians and Chinese. At that point the Greeks may really rue their recent history.



The full legal perils facing the business world if Grexit happens are uncertain