

Greece

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

M&A in Greece are mainly regulated through the following provisions:

- Law 2190/1920 for Sociétés Anonymes, which moreover regulates the transformation of other types of companies to Société Anonyme;
- Law 2166/1993 and legislative decree 1297/1972 which regulate M&A of various types of companies and mainly provide tax incentives for such transactions; and
- Law 3190/1955 for Limited Liability Companies which sets out relevant procedures and requirements for M&A in respect of Limited Liability Companies.

L2578/98 provides tax incentives on M&A of companies of different Member States of the EC and was promulgated in order to transpose Directive 90/434/EC.

Acquisitions of listed companies are also regulated by:

- Law 3461/2006 (transposing Directive 2004/25/EC) on public takeover bids;
- Law 3340/2005 (transposing Directives 2003/6/EC, 2003/124/EC, 2003/125/EC, 2004/72/EC) on the protection from abuse of privileged information and market manipulation;
- Law 3371/2005 (transposing Directive 2001/34/EC) on capital markets; and
- Decisions and Opinions of the Hellenic Capital Market Commission ("HCMC") and the Athens Stock Exchange ("ATHEX") Regulation.

1.2 Are there different rules for different types of public company?

The rules apply to public offers for acquisition of shares in respect of companies having their registered seat in Greece and whose shares are listed in an organised market in Greece at the date the decision for submission of a public offer is published.

1.3 Are there special rules for foreign buyers?

There are no such special rules or restrictions.

1.4 Are there any special sector-related rules?

There are special rules for companies operating in specific sectors,

such as exceptions, restrictions, tax incentives and/or approvals. The following are indicative examples:

- **Credit Institutions:** notable deviations include the requirement for notifications, approval - or even pre-approval - by the Bank of Greece under certain circumstances; the method of valuation and the introduction of particular tax incentives.
- **Insurance companies:** notable deviations include the supervision of any M&A within this sector by a specific authority under the Ministry of Development; the requirement for the submission of a feasibility study (activity schedule); and transfer of insurance contracts for the merging of mutual funds.

Moreover, due to the fact that the activities of companies operating in certain sectors, such as energy and telecommunication, necessitate the acquisition of licences and are supervised by particular public authorities, it is also required that changes in their shareholding be approved by said authorities (the Regulatory Authority for Energy and the National Telecommunications and Post Commission in respect of energy and telecoms companies respectively).

1.5 What are the principal sources of liability?

The liability arising between the bidder and the target and their liability towards creditors are mainly regulated by the general laws governing M&A (see question 1.1 above) as well as by the provisions of the Greek Civil Code.

In public takeovers, special provisions on liability include the following:

- Drafting of the prospectus: pursuant to Law 3461/2006 on public takeover bids, the Bidder, its consultant and the target company incur civil liability against any public offer recipient for lack of accuracy and comprehensiveness of the prospectus. This liability encompasses indemnification for any positive damage caused, without excluding other forms of liability.
- Breaches of Law 3461/2006: as a general rule, the Law stipulates the payment of a fine up to €3,000,000 for any violation of its provisions.
- Abuse of privileged information: according to Law 3340/2005 on the protection from abuse of privileged information and market manipulation, any person holding privileged information under any of the capacities mentioned therein is prohibited from using such information in order to, directly or indirectly, acquire or dispose of, or even attempt to acquire or dispose of, financial instruments related to the information for his own benefit or for the benefit of third parties. Such persons are also prohibited from disclosing any

privileged information to any other party, unless this is undertaken within the frame of one's usual business practice, or suggesting to any party to acquire or dispose of any financial instrument based on such information.

- Market manipulation: Law 3340/2005 prohibits market manipulation. The criteria under which specific behaviour is considered market manipulation are set by the board of directors of the HCMC.

The observance of the Law on the protection from abuse of privileged information and market manipulation is supervised by the HCMC and in cases of breach possible sanctions include financial penalties, suspension of the business activities of the culprits, imprisonment, etc.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

Reference is only made to M&A of Sociétés Anonymes and to the most common means of acquisition.

In particular:

1. Mergers:
 - a) By absorption: one or more companies are dissolved without liquidation and proceed to transfer to an existing company all their assets in return for giving their shareholders shares in this company and (possibly) cash (up to a certain amount).
 - b) By establishment of a new company: two companies are dissolved without liquidation and transfer to a newly-established company all their assets in return for giving their shareholders shares of this company and (possibly) cash (up to a certain amount).
2. Buy-out: This is in effect a merger by means of absorption, whereby the shareholders of the target are not provided with shares of the acquiring company but only cash. A special type of buy-out is provided, subject to the relevant reservations concerning listed companies, in the event of a shareholder holding at least 95% of a company whereby he is entitled to acquire the remaining shares (of the minority) against a price representing the actual value of their shares. The reverse of the above is also provided as a type of call option available to minority shareholders.
3. Split: a company dissolved without liquidation is split either into two separate entities through absorption, establishment of a new company, or a combination of the two.
4. Spin-off: a part or division of a company which is transferred to another existing or newly-established company.
5. Participation in the increase of the share capital: in cases where the existing shareholders are not exercising (in part or in whole) their pre-emptive rights.
6. Public takeover:
 - a) Voluntary: a Bidder offers through a public offer to acquire the shares of a target. A Bidder involved in a voluntary takeover is obliged to acquire all shares offered, when he has defined a minimum or maximum number of shares that he is committed to buying.
 - b) Mandatory: where a person already holds shares representing more than 1/3 of the total voting rights of a company, he is obliged to proceed with a public offer to acquire all the shares of the target. The same applies in respect of every person who holds more than 1/3 but not more than 1/2 of the voting rights of the company and who acquires within six months shares representing voting rights of more than 3% of the voting rights of the target. Exceptions to the mandatory takeover procedure are explicitly provided.

2.2 What advisers do the parties need?

Pursuant to Law 3461/2005, the prospectus as well as any revision of the public offer is signed by a credit institution or a company providing investment services in Greece or in any Member State. Said party is acting as the advisor of the Bidder and certifies the accuracy of the contents of the prospectus. In M&A involving non-listed companies no such obligation exists, albeit it is common practice and the conclusion of Due Diligence of the target company before proceeding to the acquisition is considered necessary. Due diligence is both of a legal and financial nature and therefore requires legal and financial expertise.

2.3 How long does it take?

In M&A, not involving listed companies, the time required will depend on the choice of the means of acquisition and also of the Law under which it is performed.

In public takeovers, the procedure includes the following steps:

Step One: The Bidder informs (in writing) the HCMC and the BoD of the target company in respect of the initiation of the takeover bid and submits to them a draft of the prospectus. The BoD submits this to the company's employees without undue delay.

Step Two: The next business day the public offer is publicised on the website of the Stock Exchange, on the Bidder's website and on the Daily Bulletin of the Stock Exchange.

Step Three: Within 10 business days from its submission the HCMC approves the prospectus. The 10 days are extended to 20 if the consideration includes titles not listed in an organised market.

Step Four: Within three business days from its approval by the HCMC, the prospectus is publicised as follows: i) in written form it is provided free to the public at the seat and branches of the Bidder, its advisor and the credit institutions or the investment consultants authorised by the Bidder; and ii) in electronic form on the website of the Bidder and its advisor. The Bidder submits the prospectus to the target and the BoD of the target forwards it to its employees.

Step Five: The acceptance period is 4-8 weeks from the date of publication of the prospectus. This period can be extended by a decision of the HCMC following a request of the Bidder, for a maximum period of two weeks.

Step Six: Within 10 days from the publication of the prospectus the BoD submits to the HCMC its justified opinion on the public offer, accompanied by a detailed report of the financial advisor. The same report is publicised without delay on the website of the Stock Exchange, the Daily Price Bulletin and the website of the Bidder and is also submitted to his employees.

The results of the public offer are publicised within two business days from the end of the acceptance period and are notified to the employees.

2.4 What are the main hurdles?

In the case of non-listed companies, the main hurdle is usually the due diligence procedure during which – particularly in the course of significant deals in terms of size and value – the disclosure of information may be insufficient or incomplete. Accordingly, the ability to apprise oneself of a clear picture of the target company and to make a correct valuation may be limited. Acquiring the necessary licences or approvals can also be a hurdle and this involves both listed and non-listed companies. Such approvals can be those required for specific sectors by the Competition Commission and the HCMC.

2.5 How much flexibility is there over deal terms and price?

In transactions involving non-listed companies not many restrictions exist since the process is governed by the principle of contractual freedom. However, this is not the case with public takeovers.

With respect to mandatory acquisitions a fair price is defined as the cash per share which may not be less than the average market price of a share during the six months prior to the date of an obligation for submission of a mandatory offer, nor than the price (if higher) at which the Bidder or parties acting on behalf or together with it, acquired shares in the 12 months prior to the date that it was obliged to submit a mandatory offer.

Furthermore, in mandatory acquisitions the Bidder is obliged to provide the option for a cash consideration.

In case the Bidder acquires, during the acceptance period, shares at a price higher than that which is offered, he is obliged to increase the offered price respectively.

2.6 What differences are there between offering cash and other consideration?

In public voluntary offers, the offering of cash or titles representing securities or a combination of the two represents a permissible alternative, whereas in mandatory acquisitions the Bidder is obliged to offer cash consideration. In cases of cash consideration the Bidder is required to submit a certification by a credit institution seated in Greece or in an EC Member State that he has the means to pay the full amount, whereas in cases of consideration through titles, he is required to demonstrate that he is in possession of the titles.

2.7 Do the same terms have to be offered to all shareholders?

Where the companies involved are not listed, this appears in the definition of the exchange ratio of the shares participating in the M&A. This is done so that a unique value is reserved for every share. However, special rights may be granted to specific shareholders, either as a result of the Articles of Association or by reference to a Shareholders' Agreement in which case mention of these special rights must be made in the M&A Agreement. Another important issue concerns the rights of different types of shareholders, such as those holding preferential shares. In fact, the decision in respect of the M&A is also approved by the Assembly of these shareholders.

In the case of public takeovers, as a general principle all holders of shares of the target company are equally treated. This is also reflected in the principle holding that where offers exceed demand, the offer of shares by the shareholders of the target are satisfied proportionately. Furthermore, the publication of the public offer also serves the principle of equal treatment of shareholders.

2.8 Are there any limits on agreeing terms with employees?

The employees of the target company are involved in the takeover procedure of public takeovers since the BoD is required to inform them about the public offer and submit to them the Prospectus and its justified opinion on the public offer. If the employees submit in a timely manner their comments to the BoD, the latter must append their comments to its opinion. Moreover, as part of the obligatory information contained in the prospectus, the law requires the Bidder to define his intention in respect of the preservation of the position of the employees in the target, setting out any possible amendment in the labour status of the target and particularly its strategic plans

for the companies and the possible consequences to the work force and the place of operation of the companies.

As a general comment it has to be said that the terms agreed with the employees and their protection are derived from the applicable labour laws.

2.9 What documentation is needed?

In M&A involving non-listed companies, the documentation required is the following:

- draft of the Merger Agreement;
- valuation of the companies' assets;
- reports of the BoDs and decisions on the M&A proposal;
- decision of the General Assemblies of the companies; and
- approvals and licences of competent authorities.

In public takeovers, the documentation required is the following:

- Public Offer drafted by the Bidder, including all terms defined by the law as a minimum content. This Offer is submitted to the HCMC and to the BoD of the target.
- Prospectus, drafted and publicised by the Bidder, including all terms defined by the law as a minimum content.
- Justified opinion of the BoD of the target, accompanied by a detailed report of the financial consultant, including all terms defined by the law as a minimum content. This document is submitted to the HCMC and to the Bidder and notified to the employees.
- Statements by Credit Institutions confirming that the Bidder would be able to submit to the target the required amount for the acquisition.
- Declaration of Acceptance, by which the shareholders of the target accept the Bidder's offer.

2.10 Are there any special disclosure requirements?

There are, in a way, disclosure requirements in the sense of the minimum content required by the law to be included in the documentation; the obligation as regards the publicity of the documentation, as well as the respective notifications.

2.11 What are the key costs?

In M&A involving non-listed companies, the costs mainly include the following: capital concentration tax, duty in favour of the Hellenic Competition Commission, publication costs, advisor fees (for the Due Diligence, the valuation of shares, etc.), taxes for the transfer of assets with the reservation of the tax incentives under Law 2166/2003 and Legislative Decree 1297/1972.

In public takeovers the costs mainly encompass advisor fees, availability of the consideration as certified by credit institutions, publication costs and transaction costs.

2.12 What consents are needed?

For companies which are not listed, the approval of the BoDs and of the General Assemblies of all classes of shares of the companies is required.

In public takeovers, the approval by the HCMC of the takeover offer and of the Prospectus is required.

Further approval may be required as per each case, such as that required by the Competition Committee, or in cases of special sectors, the approval of the competent authorities.

2.13 What levels of approval or acceptance are needed?

Unless otherwise provided in the Articles of Association of the companies, the decision of the General Assemblies have to be taken with a majority of 2/3 of the fully paid-up capital of the companies.

2.14 When does cash consideration need to be available?

With regard to public takeovers, when the consideration offered is in cash the submission of a certification that the Bidder has the means to pay the full amount of the price is required by a credit institution seated in Greece or in an EC Member State.

3 Friendly or Hostile

3.1 Is there a choice?

The choice may affect the BoD since hostile takeovers are considered those that are attempted despite the objection of the BoD of the target.

3.2 How relevant is the target board?

The reaction of the board actually categorises the transaction as friendly or hostile. In fact, it might be that a friendly M&A is initiated by the board as a defence to a hostile offer.

3.3 Does the choice affect process?

Since the board is required by the law to provide its opinion on the proposed transaction but also holds the information required and related with the success of the transaction, the choice will indeed affect the process. Other parameters which are vital for its success, such as time and cost, will depend on the behaviour of the board which may elect or not to initiate defensive measures and facilitate the whole procedure.

4 Information

4.1 What information is available to a buyer?

The documentation must by law be made publicly available. This requirement is also applicable to several other company documents, such as annual financial statements, summary of articles of association and its modifications, data of the BoD and its powers, etc. As a common practice to any M&A, the due diligence performed provides access to the required information by any Bidder.

4.2 Is negotiation confidential and is access restricted?

In respect of non-listed companies this is strictly a business issue, while in public takeovers confidentiality may have to be maintained for a certain period.

4.3 What will become public?

All information included in the documentation is required, see question 2.9.

4.4 What if the information is wrong or changes?

This issue is particularly sensitive in public takeovers whereby the Bidder, its advisor and the persons responsible for drafting the prospectus are liable for the damage caused to the recipients of the public offer due to inaccurate or insufficient information. Changes to the public offer may be undertaken within a specified time limit set by the law and only if they improve the terms of the offer.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

Indeed, shares can be bought outside the offer process and in fact even with a higher price than the one proposed with the takeover procedure.

5.2 What are the disclosure triggers?

During the period starting from the announcement of the public offer until the end of the acceptance period: a) the Bidder, the parties holding at least 5% of the voting rights of the target and the BoD members are obliged to declare to the HCMC and to publicise to the Daily Price Bulletin every acquisition and its price of shares of the target or the company of which the shares are offered as consideration, within a set deadline; and b) every person acquiring at least 0.5% of the target or of the Bidder or of the company the shares of which are offered as consideration is obliged to declare to the HCMC and to publicise to the Daily Price Bulletin such acquisition, as well as the price and the voting rights, by itself or by any person acting on its behalf or in coordination with it or by the entities which it controls.

5.3 What are the limitations and implications?

In voluntary public offers the Bidder may define a minimum or a maximum number of shares that he is interested in acquiring, otherwise he shall be obliged to acquire all shares offered to him. If the demand exceeds the offer the Bidder will satisfy them proportionately.

6 Deal Protection

6.1 Are break fees available?

Break fees can be agreed but a common practice does not exist.

6.2 Can the target agree not to shop the company or its assets?

The target is free to investigate alternative bids and to therefore not shop. In fact, any agreement to the contrary is not valid.

6.3 Can the target agree to issue shares or sell assets?

Any such decision, if taken during the acceptance period, may be subject to the control of the HCMC.

6.4 What commitments are available to tie up a deal?

An integral part of the procedure is the issuance by the BoD of its justified opinion, accompanied by the report of the financial consultant and, where available, the comments of the employees.

7 Bidder Protection

7.1 What deal conditions are permitted?

While the parties are generally free to agree conditions in an M&A of a non-listed company, a public offer cannot be subject to any conditions, with the exception of the terms defined in the prospectus and which relate to the provision of required licences or approvals or to the issue of new shares which are offered under consideration.

7.2 What control does the bidder have over the target during the process?

The limitations provided by the law with regard to defensive measures available to the target during the acceptance period actually provide an indirect control to the Bidder. Moreover, the Bidder is allowed to revoke his offer in cases where competitive offers are submitted to the target or following the consent of the HCMC in the event of an unforeseen change which renders the continuation of the offer especially onerous to the Bidder.

7.3 When does control pass to the bidder?

Control passes to the Bidder when he acquires more than 50% of the voting rights of the target; however, full control in the sense of providing the Bidder to take decisions on all issues requiring by the law increased majority, will pass to the Bidder upon acquisition of more than 67% of the voting rights of the target. Of course, depending on the spread of the shares, the aforementioned percentages may be lower.

7.4 How can the bidder get 100% control?

Acquisition of 100% of the target in public takeovers is provided in the following cases:

- As a Bidder's entitlement; whereby a Bidder having made a public offer to acquire all shares of a target ends up holding 90% of shares and as a result may demand the transfer of the remaining shares within the time limits set by the law.
- As a Bidder's obligation; whereby a Bidder having made a public offer to acquire all shares of a target ends up holding 90% of shares and as a result is obliged to accept all shares offered by the remaining shareholders within the time limits set by the law.

8 Target Defences

8.1 Does the board of the target have to tell its shareholders if it gets an offer?

An M&A of non-listed companies must be approved by the General Assembly of the target company and therefore there cannot be a deal without the knowledge of shareholders, which is achieved through the publications required by the law.

In public takeovers it is provided that shareholders must have sufficient time and knowledge in order to be in a position to make a decision on the public offer; however, during the early stages of an offer and the respective negotiations the board will be under a confidentiality obligation not to disclose an offer.

8.2 What can the target do to resist change of control?

The BoD of the target is entitled to seek for alternative proposals or even issue an unfavourable opinion on the public offer.

8.3 Is it a fair fight?

Although the BoD of the target may set in place impediments in the closing of the deal and accordingly in the change of control, it is subject to restrictions provided by the law, including the obligation to always act in the benefit of the company, to issue an opinion which is justified and accompanied by the report of the financial consultant. One should also emphasise that the documentation pertinent to the offer is publicly available to all decision makers.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

The success of an M&A may be influenced by, among others, the equity structure, the necessity or not for acquisition of licences or approvals, the efficient exchange and evaluation of information provided, the advisers, the size of the companies and their presence in local communities as well as on the existence and power of unions of employees.

9.2 What happens if it fails?

If a public takeover fails, then the Bidder is entitled either to proceed to the submission of a new offer or if he already holds shares in the target he may attempt to either participate in an increase of its share capital and participate therein or otherwise exit the company.

10 Updates

10.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in M&A Law in Greece.

The most recent news relate to the initiation of negotiations between the two largest airlines in Greece, i.e. Aegean Airlines S.A and Olympic Air S.A. According to the notification made to the HCMC by Aegean Airlines, which is listed in the ATHEX, the parties initiated negotiations for a merger through the establishment of a new company in which both companies will equally participate. Although the procedure is still in an early stage, the said case shall constitute one of the most significant mergers in Greece due to the size of the companies involved and their market share which seems to represent 97% of the airline industry in Greece.

Further M&A activity is also expected in the public sector, particularly through an anticipated series of privatisations that represents the Greek government's strategic and political challenge. This will probably encompass very large public enterprises such as the State Football Betting Company and the Post Bank as is rumoured in the press.

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Lambros is an Associate in the corporate and commercial practice group of Mourgelas & Associates. His work involves advice and support on a range of corporate and commercial matters including company formation, mergers and acquisitions, joint ventures, shareholder arrangements and commercial contracts. Lambros also regularly advises on issues arising in the context of corporate disputes, including representation of companies before the respective courts.

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Lambros studied law at the Athens Law School and he has been a member of the Athens Bar Association since 2002. He is fluent in English and also speaks German.

MOURGELAS & ASSOCIATES Law Firm

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The firm's main expertise lies in corporate and M&A, energy and environment, construction and public contracts, media and advertising, telecoms, IP and technology, regulatory and real estate, and public international law and arbitration.

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The firm's attorneys are all fluent in English and as a team also speak German and French.

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