PUBLIC M&A

Greece

LEXOLOGY
Getting The Deal Through

Consulting editor
Simpson Thacher & Bartlett LLP

Public M&A

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into public M&A issues worldwide, including types of business combination; principal laws and regulations; cross-border and sector-specific considerations; governing laws; filing and disclosure requirements; duties of directors and controlling shareholders; shareholder approval and appraisal rights; hostile transactions; break-up fees and frustration of additional bidders; government influence; conditional offers; financing; minority squeeze-outs; waiting and notification periods; tax; labour and employee benefits; restructuring, bankruptcy or receivership; anti-bribery, anti-corruption and sanctions issues; and recent trends.

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STRUCTURES AND APPLICABLE LAW

Types of transaction

How may publicly listed businesses combine?

Combinations of publicly listed businesses can be effected through the same methods that private companies have available, although the relevant processes for listed businesses are more enhanced with respect to related disclosure requirements and protection of minority shareholders. In general, business combinations may take the form of an asset or a share deal or can be effected through a corporate transformation. Shares deals are usually preferred against a transfer of business structure, as the latter entails the joint liability of both the seller and the buyer for liabilities that relate to the specific business and have been created until the date of the transfer (article 479 of the Greek Civil Code). Nevertheless, a transfer of business can also be effected through a corporate transformation, which is easier to complete as it entails the universal succession of the transferor by the transferee by operation of law.

Law stated - 08 May 2023

Statutes and regulations

What are the main laws and regulations governing business combinations and acquisitions of publicly listed companies?

The main laws governing business combinations and acquisitions are:

- Law No. 4548/2018 on sociétés anonymes, Law No. 4072/2012 on private companies and Law No. 3190/1955 on limited liability companies with respect to the corporate aspects of the transactions;
- Law No. 4601/2019 on corporate transformations (Greek Corporate Transformations Law);
- Law No. 3959/2011 on competition (Greek Competition Law) and Regulation (EC) No. 139/2004 (EC Merger Regulation) with respect to competition law issues;
- Law No. 3461/2006 transposing Directive 2004/25/EC into Greek law (Greek Tender Offer Law) on takeover bids for listed Greek companies;
- Law No. 3556/2007 transposing Directive 2004/109/EC into Greek law (Greek Transparency Law) on disclosure obligations in the case of acquisition of significant holdings in listed companies;
- Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation);
- Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (Prospectus Regulation) and articles 57–68 of Law No. 4706/2020;
- ATHEX Regulation on disclosure requirements of listed companies on the regulated market of the Athens Exchange;
- Law No. 3371/2005 on, inter alia, delisting consummated through corporate transformations and corporate actions;
- Law No. 4738/2020 (Greek Bankruptcy Code);
- Law No. 4172/2013 (Income Tax Code), which provides tax incentives in certain acquisition cases; and
- other special provisions of civil, commercial and tax law.

Law stated - 08 May 2023

Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

The structure of a cross-border combination or corporate transformation largely depends on the outcome that the parties involved aim for; primarily, whether the control exercised over the listed entity will change and whether the listed entity will remain listed on a Greek or a EU regulated market or become private. In a public-to-private transaction, this can be effected under the currently applicable regime either through the launching of a tender offer, following which the offeror holds at least 90 per cent of the total voting rights in the target company and can exercise the squeeze-out right, or by obtaining (other than through a tender offer) 95 per cent of the total voting rights in the target company and shareholders' approval on delisting. Cross-border mergers between limited liability companies governed by EU law are regulated by Law No. 3777/2009, which transposed Directive 2005/56/EC into Greek law. If, as a result of the corporate transformation, the resulting entity to which the shareholders of the listed Greek legal entity will participate is delisted from the Athens Exchange and listed on a EU regulated market, the relevant shareholders' approval threshold is 90 per cent of the total voting rights. There are also certain restrictions on foreign ownership in Greece pursuant to article 25(1) of Law No. 1892/1990 that concern:

- any transaction inter vivos by which an individual or legal entity of a nationality or registered seat outside the European Union or the European Free Trade Association is granted an in rem or in personam right on real estate in border areas; and
- any transfer of shares or corporate units or any change of the shareholders or partners of any type of legal entity that owns real estate in border areas.

Certain sectors, such as energy, may also have special restrictions on foreign ownership.

Law stated - 08 May 2023

Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

Notwithstanding the provisions or restrictions on foreign ownership in Greece, prior approval must be obtained to acquire holdings in:

- credit, financial institutions and other supervised entities by the Bank of Greece or, in the case of one of the four systemic Greek banks, by the European Central Bank;
- insurance companies by the Bank of Greece;
- investment firms and other supervised entities by the Hellenic Capital Market Commission;
- gaming companies by the Hellenic Gaming Commission;
- certain energy companies by the Regulatory Authority for Energy; and
- certain telecommunications companies by the Hellenic Telecommunications and Post Commission.

Law stated - 08 May 2023

Transaction agreements

Are transaction agreements typically concluded when publicly listed companies are acquired? What law typically governs the agreements?

Documents entered into vary depending on the type and structure of the business combination or acquisition and the nature of the asset or business acquired. The most common forms of preliminary documentation are:

- a non-binding memorandum of understanding outlining the mutual understanding of the parties on the structure of the acquisition;
- a confidentiality undertaking regarding the secrecy of sensitive information, combined in some cases; and
- an exclusivity agreement by which the shareholders involved (or in some cases the target, to the extent permitted and justified by the nature of the transaction) are legally committed to the potential buyer not to deal with competing buyers for a period during which only the potential buyer can conduct due diligence and decide on the acquisition.

With respect to the main documentation in an acquisition or disposal of business, a sale and purchase agreement or an asset transfer agreement is executed, and a shareholders' agreement, if the buyer does not acquire 100 per cent of the capital of the target.

In a tender offer, all the documents provided for by the Greek Tender Offer Law are required. In acquisitions through a corporate transformation, contractual documentation mainly includes the draft and the final merger or spin-off agreement, which must be executed by virtue of a notarial deed.

Pursuant to article 3 of Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I Regulation), parties are free to choose the law applicable to their agreement. To the extent that the agreement refers to rights in rem on assets, including shares, which are considered to be located in Greece, the proprietary aspects of these agreements will be governed by Greek law.

Law stated - 08 May 2023

FILINGS AND DISCLOSURE

Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination or acquisition of a public company? Are there stamp taxes or other government fees in connection with completing these transactions?

Depending on the type of transaction for the business combination, submissions and related government fees vary. No government fee is paid for the submission and review of transaction documents pursuant to the Greek Corporate Transformations Law, Law No. 4548/2018 on sociétés anonymes, Law No. 4072/2012 on private companies and Law No. 3190/1955 on limited liability companies.

There are review fees with respect to the submission and approval of the information memorandum of a tender offer that must be paid to the Hellenic Capital Market Commission and there are other charges that must be paid to the Athens Exchange when listing new shares owing to a corporate action of the listed entity.

Related transaction taxes and stamp duty also depend on the structure of the transaction. Sale of shares is exempted from value added tax. The sale of shares listed in Greece is subject to a transaction tax of 0.2 per cent, owed by the seller. The same applies for shares listed anywhere, provided that the seller, individual, legal entity or permanent

establishment is a Greek tax resident.

In the transfer of an asset, the taxation will depend on the type of the asset.

On the assumption that the recipient will continue the business, in the transfer of a business (or its assets as a whole, without its liabilities) where both the transferor and transferee are liable to value added tax, the transfer falls outside the scope of value added tax (because it is not considered a supply of goods), but is subject to stamp duty at a rate of 2.4 per cent. Where the transferor or the transferee either supply goods or services that are exempted from value added tax or are themselves exempted from value added tax, the transfer will be subject to but exempted from value added tax, although it will be exempted from value added tax where the transferor and the business are not liable to value added tax. Value added tax is paid by the buyer. Stamp duty is owed jointly by both parties, and it is a matter of agreement on who will bear the cost and to what degree. If there is no specific agreement, the cost will be divided equally between the parties.

Special tax provisions provide for different tax benefits depending on the process of the corporate transformation to be followed.

Law stated - 08 May 2023

Information to be disclosed

What information needs to be made public in a business combination or an acquisition of a public company? Does this depend on what type of structure is used?

The level and content of disclosure largely depends on the involvement of the listed company in the contemplated transaction.

To the extent that the deal is confined to the shareholders' level, only disclosures relevant to acquisition and disposal of any significant holdings and tender offer process will apply. If the target company is also involved, the level and content of disclosure will be governed by the Market Abuse Regulation rules and any further internal corporate governance rules that the listed target company may have, which is not very usual.

When launching a tender offer, no preparatory announcement should be made until the official launch announcement. The minimum content requirement of the tender offer information memorandum and the launch and closing announcement is provided for by the Greek Tender Offer Law. Usually, the most controversial matters arising with respect to the content of the tender offer documents are the definition of parties acting in concert with the offeror, transactions that are taken into account when determining the tender offer consideration, the business strategy of the offeror regarding the target company and the employment terms applying thereafter. The above-mentioned documents, as well as any fairness opinion required to determine the tender offer consideration and the opinion of the board of directors of the target company on the tender offer launched, are all made available to the public.

In corporate transformations, all relevant documents submitted to the general meeting of shareholders of the legal entities involved for their approval (merger agreement, any valuation reports, if applicable, and the relevant report by the board of directors of each legal entity involved in the corporate transformation) are made publicly available.

If the corporate transformation or the combination or acquisition entails a corporate action of the listed entity for which a prospectus or an information document must be published pursuant to the Prospectus Regulation, Law No. 4706/2020 and the ATHEX Regulation, the document is also made public.

Law stated - 08 May 2023

Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a public company? Are the requirements affected if the company is a party to a business combination?

The Greek Transparency Law provides that disclosure requirements are triggered when:

- a person reaches, exceeds or falls below 5, 10, 15, 20, 25, 33.33, 50 and 66.66 per cent of its total voting rights; and
- a person holding more than 10 per cent of the voting rights has an increase or a decrease of that percentage equal to or higher than 3 per cent.

When calculating the above-mentioned thresholds, the voting rights that are indirectly controlled by a person in a listed company should be also taken into account. A person may indirectly control voting rights based on either a discretionary management agreement or a depositary agreement, or a discretionary proxy granted in view of a forthcoming general meeting of shareholders, or because the shareholder is an entity controlled by that person. Other instances of article 10 of Directive 2004/109/EC on the acquisition or disposal of major proportions of voting rights should also be taken into account when calculating the aforementioned thresholds.

These requirements are not affected if the company is party to a business combination.

There are also enhanced disclosure requirements in a tender offer for the holdings of the offeror in the target company following the publication of the announcement on the launch of the tender offer and until the lapse of the acceptance period. These disclosure requirements are triggered if:

- the offeror, any individual or a legal entity holding at least 5 per cent of the voting rights in the target company, as well as any member of the board of directors of the target company or the company whose securities are offered as consideration, acquires on- or off-exchange securities of the target company or the company whose securities are offered as consideration; and
- any person acquires at least 0.5 per cent of the voting rights in the target company or the offeror company or any other company whose securities are offered as consideration.

In both sets of circumstances, the same obligation is imposed on any individual or legal entity acting on behalf of the persons mentioned, and to any undertaking controlled by them or any person acting in concert with them.

Law stated - 08 May 2023

DIRECTORS' AND SHAREHOLDERS' DUTIES AND RIGHTS

Duties of directors and controlling shareholders

What duties do the directors or managers of a publicly traded company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination or sale? Do controlling shareholders have similar duties?

Directors have duties of loyalty, non-competition and secrecy to the company. There are no distinct duties of the shareholders of the listed entity, apart from cases where the law provides for direct liability to the shareholders, as in the case of corporate transformations, where the members of the board of directors of the entities involved are liable to

the shareholders for any damage the latter incurred as a result of the board members' wilful misconduct or omission, which also constitutes a breach of their duties when preparing and consummating the corporate transformation.

In contrast, controlling shareholders may pursue and serve their own interests, which may be different from other minority shareholders' interests. The exercise of the rights of the controlling shareholder can only be challenged as abusive and restricted to a certain extent by the minority shareholders' rights that the Greek corporate law provides with respect to, inter alia, the postponement of the adoption of a decision by the general meeting or the addition of an item to the agenda and other special law provisions that provide for increased quorum and majority voting requirements.

In the ordinary course of business, members of the board of directors owe no duty to the creditors of the company. When the entity begins to have solvency issues, board members have a duty to undertake measures in a timely manner, including taking reorganisation actions or even proceeding to a bankruptcy petition if the entity becomes insolvent pursuant to the relevant provisions of the Greek Bankruptcy Code.

Law stated - 08 May 2023

Approval and appraisal rights

What approval rights do shareholders have over business combinations or sales of a public company? Do shareholders have appraisal or similar rights in these transactions?

All types of corporate transformation require prior shareholders' approval with an increased quorum and majority and some of the transformations trigger an even higher quorum and majority when they involve delisting or listing to another EU market.

In general, a shareholder may petition the annulment of the merger if it is for reasons relating to the validity of the relevant approvals by the shareholders of the entities involved, and not on grounds that the consideration was not fair and equitable. In the latter case, shareholders only have a right to claim damages. To the extent that the annulment of the merger is disproportionate to the legal defect that causes the annulment, the court may not annul the merger and grant damages to the complaining shareholders. The Greek Corporate Transformations Law specifically provides that if a legal entity resulting or benefiting from a merger or demerger, respectively, is a listed company, the shareholders of the entities involved do not have similar annulment rights but are entitled to damages, provided they did not participate in or oppose the relevant corporate decision for the business combination.

Law stated - 08 May 2023

COMPLETING THE TRANSACTION

Hostile transactions

What are the special considerations for unsolicited transactions for public companies?

In unsolicited takeovers of public companies, the buyer or offeror has less information on the target, restricting itself to publicly available information or information the selling shareholders may provide without violating any provision of the EU Market Abuse Regulation or other similar or commercial restriction. They also run the risk, in a tender offer, that the board of directors of the target company will issue a negative opinion on the tender offer launched.

Law stated - 08 May 2023

Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a public company's ability to protect deals from third-party bidders?

Deal protection is not common in Greece. Although break-up fees have been agreed in a small number of cases, their enforceability has not yet been tested. Further, in the case of Greek law-governed contracts, generally applicable principles of Greek private law (eg, abusive exercise of rights) will limit their enforceability. There are also financial assistance restrictions, which limit the ability of the target company to provide any security for the successful completion of the business combination.

The target company and its shareholders have the right to recover damages if the tender offer is cancelled. A tender offer (either mandatory or voluntary) cannot be withdrawn, unless a competing offer has been submitted or the Hellenic Capital Market Commission allows it, which will be under exceptional circumstances on grounds of hardship. To date, no such withdrawal has been allowed.

Law stated - 08 May 2023

Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations or acquisitions are regulated, may government agencies influence or restrict the completion of such transactions, including for reasons of national security?

Government agencies may only influence or restrict completion of such transactions for national security if provided for by Greek law or agreed between the parties in cases of privatisation or other transactions concerning the Hellenic Republic Asset Development Fund.

Law stated - 08 May 2023

Conditional offers

What conditions to a tender offer, exchange offer, merger, plan or scheme of arrangement or other form of business combination are allowed? In a cash transaction, may the financing be conditional? Can the commencement of a tender offer or exchange offer for a public company be subject to conditions?

To mitigate the risk of not completing the transaction, parties agree to set conditions precedents; for example, the buyer receiving any required regulatory approvals.

In a tender offer, the only acceptable conditions precedent for the completion of the tender offer are the granting of any regulatory approvals and the issuance of the securities that are offered as consideration, if applicable.

If any of the parties unduly terminate the sale and purchase agreement, then the non-defaulting party is entitled to compensation, which usually covers the time and resources spent in negotiating the deal or the loss of another deal. In most cases, penalty clauses are agreed upon; if they are excessive, they can be reduced by the court.

Although mergers can, in theory, be subject to conditions precedent, it is not common in practice.

Law stated - 08 May 2023

Financing

If a buyer needs to obtain financing for a transaction involving a public company, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

In a tender offer, a signed cash confirmation by an EU credit institution for an amount that is equal to 100 per cent of the tender offer consideration plus depositary settlement fees and applicable taxes must be included in the tender offer information memorandum, and must remain in place and valid until the completion of the tender offer. In all other cases, it is a matter of agreement between the parties whether financing will be considered a given or included as a condition precedent. The existing debt of the bidder or the offeror is, in principle, irrelevant for the purposes of the business acquisition financing, unless the offeror cannot raise any more debt. The existing debt of the target company could be important if, following a delisting of the target company, the plan is to push down the debt from the offeror to the target company. In this case, if the 90 per cent threshold for a squeeze-out is not reached, and the target company is not delisted, any loan raised for the tender offer funding could be indirectly serviced only by capital returns paid by the target company to the offeror. In all cases, there would be leakage to minority shareholders.

Law stated - 08 May 2023

Minority squeeze-out

May minority stockholders of a public company be squeezed out? If so, what steps must be taken and what is the time frame for the process?

With respect to exercising the squeeze-out right in the context of a tender offer, the offeror must first launch a tender offer addressed to all shareholders of the listed entity for the total number of their shares and offer a cash consideration at least equal to the one that would be required for a mandatory tender offer. Following the completion of the tender offer, where the shareholder holds at least 90 per cent of the voting rights in the listed entity (irrespective of whether this percentage was held before or after the tender offer), it has the right to squeeze out the minority shareholders of the target company. The offeror has the right to exercise the squeeze-out right within three months of the tender offer acceptance period expiring, provided that this intention has been clearly stated in the information memorandum published for the relevant tender offer.

Law stated - 08 May 2023

Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations or acquisitions involving public companies?

The tender offer acceptance period is, by law, a minimum of four weeks, and in an acquisition of at least 90 per cent of the voting rights through the tender offer, the minorities' sell-out right lasts for three months from the publication of the tender offer results and the squeeze-out right lasts for three months from the expiry of the tender offer acceptance period. Other mandatory waiting periods (eg, the period between the publication of the invitation and the general meeting of the shareholders to approve the corporate transformation) also apply pursuant to Law No. 4548/2018 on sociétés anonymes, Law No. 4072/2012 on private companies and Law No. 3190/1955 on limited liability companies.

Law stated - 08 May 2023

OTHER CONSIDERATIONS

Tax issues

What are the basic tax issues involved in business combinations or acquisitions involving public companies?

In most cases, the parties involved decide how to structure the transaction based on relevant tax implications. It should be noted that the business purpose of the transaction must be prevalent and documented, as the tax authorities, on the grounds of tackling tax avoidance, will disregard arrangements that primarily aim in avoiding any tax burden.

Another common issue relates to the structuring of the financing and related tax considerations that arise.

Another factor that must be considered, especially in cross-border business combinations, is that there is no tax consolidation.

Law stated - 08 May 2023

Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination or acquisition involving a public company?

When the shares of a target company are acquired, then only the shareholders change; the employees of the target company remain in employment.

However, when a buyer acquires a business, or part of a business, from the target company, the employees dedicated to that business are in principle transferred automatically to the acquiring entity. In this case, pursuant to Presidential Decree 178/2002, which transposed Directive 98/50/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, the rights and obligations from an employment relationship existing on the date of the transfer are, by reason of the transfer and by operation of law, transferred to the buyer while the transferor and the transferee are jointly and severally liable for any pre-transfer employee claims. Information or consultation obligations apply, depending on the circumstance, while special provisions apply for pension plans. The same may be true where assets are acquired that qualify as business from a labour perspective, irrespective of their qualification in terms of tax.

Presidential Decree 178/2002 also applies to mergers and other capital transformations (demergers, partial demergers and spin-offs).

Law stated - 08 May 2023

Restructuring, bankruptcy or receivership

What are the special considerations for business combinations or acquisitions involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Corporate transformations pursuant to the Greek Corporate Transformations Law may involve legal entities that have entered into a state of dissolution and liquidation (either upon opening bankruptcy proceedings or otherwise), provided that the distribution of liquidation proceeds has not yet commenced and that the minimum capital requirements, where applicable and depending on the legal entity type, are met. If the legal entity has been declared bankrupt under the Greek Bankruptcy Code, the corporate transformation can be effected following ratification of the reorganisation plan

by a final decision or repayment of all creditors in the bankruptcy proceedings. The completion of the business combination results in the revival of the acquiring or receiving company.

A special provision has also been included in the Greek Tender Offer Law, according to which the acquisition or increase of the voting rights in the company that is effected by a rehabilitation agreement ratified in the context of the pre-bankruptcy rehabilitation procedure does not trigger the obligation to launch a mandatory tender offer.

Law stated - 08 May 2023

Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations with, or acquisitions of, a public company?

In addition to the corporate action that can be exercised against the members of the board of directors in business combinations, if the listed entity suffered damage, penal sanctions can be imposed on the natural persons who have committed crimes of this nature.

From a civil law perspective, pursuant to article 8 of Law No. 2957/2001, which ratifies the Civil Law Convention on Corruption, any contract or any clause of a contract providing for corruption is null and void.

Law stated - 08 May 2023

UPDATE AND TRENDS

Key developments

What are the current trends in public mergers and acquisitions in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory framework governing M&A or the financial sector in a way that could affect business combinations with, or acquisitions of, a public company?

There are no updates at this time and we do not anticipate any proposals in the near future.

Law stated - 08 May 2023

Jurisdictions

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Brazil	Loeser e Hadad Advogados
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China	HJM Asia Law & Co LLC
Germany	GSK Stockmann
Ghana	Kimathi & Partners Corporate Attorneys
Greece	Karatzas & Partners Law Firm
India	Khaitan & Co
Ireland	Mason Hayes & Curran LLP
Israel	Barnea Jaffa Lande
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Netherlands	AKD
Nigeria	G Elias
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