

# PRIVATE M&A

## Greece



# Private M&A

Consulting editors

**Will Pearce, Louis L Goldberg**

*Davis Polk & Wardwell LLP*

---

Quick reference guide enabling side-by-side comparison of local insights, including structure and process, legal regulation, consents and filings; advisers, negotiation and documentation; due diligence and disclosure; pricing, consideration and financing; conditions, pre-closing covenants and termination rights; representations, warranties, indemnities and post-closing covenants; tax considerations; employees, pensions and benefits; and recent trends.

---

Generated 20 September 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

# Table of contents

## **STRUCTURE AND PROCESS, LEGAL REGULATION AND CONSENTS**

Structure

Legal regulation

Legal title

Multiple sellers

Exclusion of assets or liabilities

Consents

Regulatory filings

## **ADVISERS, NEGOTIATION AND DOCUMENTATION**

Appointed advisers

Duty of good faith

Documentation

## **DUE DILIGENCE AND DISCLOSURE**

Scope of due diligence

Liability for statements

Publicly available information

Impact of deemed or actual knowledge

## **PRICING, CONSIDERATION AND FINANCING**

Determining pricing

Form of consideration

Earn-outs, deposits and escrows

Financing

Limitations on financing structure

## **CONDITIONS, PRE-CLOSING COVENANTS AND TERMINATION RIGHTS**

Closing conditions

Pre-closing covenants

Termination rights

## **REPRESENTATIONS, WARRANTIES, INDEMNITIES AND POST-CLOSING COVENANTS**

Scope of representations, warranties and indemnities

Limitations on liability

**Transaction insurance**  
**Post-closing covenants**

## **TAX**

**Transfer taxes**  
**Corporate and other taxes**

## **EMPLOYEES, PENSIONS AND BENEFITS**

**Transfer of employees**  
**Notification and consultation of employees**  
**Transfer of pensions and benefits**

## **UPDATE AND TRENDS**

**Key developments**

## Contributors

### Greece



**Catherine M Karatzas**

c.karatz@karatza-partners.gr

*Karatzas & Partners Law Firm*



**Anna K Manda**

a.manda@karatza-partners.gr

*Karatzas & Partners Law Firm*



**Olga Vinieri**

o.vinieri@karatza-partners.gr

*Karatzas & Partners Law Firm*



## STRUCTURE AND PROCESS, LEGAL REGULATION AND CONSENTS

### Structure

How are acquisitions and disposals of privately owned companies, businesses or assets structured in your jurisdiction? What might a typical transaction process involve and how long does it usually take?

Acquisitions and disposals can be structured either as asset deals or as share deals, depending on the interest of the potential buyer or the seller's intention, as well as tax structuring issues. A transfer of business can also be effected by means of a corporate transformation (merger, hive down or division), which entails the universal succession of the transferred business by the transferee by operation of law.

The timing usually depends on the due diligence and receipt of any necessary regulatory approvals. In the case of corporate transformations, there are also certain deadlines by law that need to be observed.

*Law stated - 02 August 2023*

### Legal regulation

Which laws regulate private acquisitions and disposals in your jurisdiction? Must the acquisition of shares in a company, a business or assets be governed by local law?

There is no special legislation on M&A activity in Greece; however, in relation to M&A transactions, the following laws generally apply:

- the relevant provisions of the Civil Code for all contractual matters, if the parties select Greek law to govern the agreement;
- Law 4548/2018 on sociétés anonymes (the Corporate Law), Law 4072/2012 on private companies and Law 3190/1955 on limited liability companies for the corporate aspects of transactions;
- the Competition Law 3959/2011, which was recently amended by Law 4886/2022 (Greek Competition Law) and the EC Merger Regulation (Council Regulation (EC) No. 139/2004), as well as all other implementing regulations and guidelines, for merger control issues;
- the Corporate Transformations Law 4601/2019 for corporate transformations;
- the Income Tax Code (Law 4172/2013), Law 2166/1993, Law 1297/1972 and Law 4935/2022, which provide for tax incentives in certain M&A cases and corporate transformations; and
- other special provisions of civil, commercial, criminal and tax law.

Pursuant to article 3 of Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (the 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 and transfer thereof) that are considered to be located in Greece, such rights will be governed by Greek law.

*Law stated - 02 August 2023*

### Legal title

What legal title to shares in a company, a business or assets does a buyer acquire? Is this legal title prescribed by law or can the level of assurance be negotiated by a buyer? Does legal title to shares in a company, a business or assets transfer automatically by operation of law? Is there a difference between legal and beneficial title?

There is no distinction under Greek law between legal and beneficial title. M&A transactions in Greece refer to the acquisition of ownership over the shares or assets sold. In the case of corporate transformations where the entity or business under transformation is absorbed by the transferee, transfer of the underlying business and assets, including licences, is effected automatically by operation of law.

*Law stated - 02 August 2023*

### **Multiple sellers**

Specifically in relation to the acquisition or disposal of shares in a company, where there are multiple sellers, must everyone agree to sell for the buyer to acquire all shares? If not, how can minority sellers that refuse to sell be squeezed out or dragged along by a buyer?

In principle, each seller should agree to sell with the buyer to transfer its shares. In accordance with the Corporate Law, drag-along rights can be included in the articles of association of the company, which may lead to a forced sale by the minority shareholders of their shares.

In addition, where the buyer acquires at least 95 per cent of the capital of a société anonyme, the buyer has the right to squeeze out the minority shareholders (by paying them fair compensation, the amount of which is determined by the court) within a five-year period from the date the buyer reached the 95 per cent threshold.

*Law stated - 02 August 2023*

### **Exclusion of assets or liabilities**

Specifically in relation to the acquisition or disposal of a business, are there any assets or liabilities that cannot be excluded from the transaction by agreement between the parties? Are there any consents commonly required to be obtained or notifications to be made in order to effect the transfer of assets or liabilities in a business transfer?

In the case of a business transfer (ie, sale of a group of assets constituting a business) that is considered as 'special succession' (pursuant to the Civil Code, by assigning each of the rights and assuming each of the liabilities of a specific business), the transferee will acquire by operation of law all liabilities referring to the specific business pursuant to article 479 of the Civil Code.

Article 479 provides for the joint liability of both the seller and the buyer for liabilities that relate to the specific business and that have been created until the date of the transfer. The buyer's liability is limited up to the value of the assets transferred, whereas the seller has unlimited liability. The parties cannot contractually agree to limit such liability beforehand. Specific assets can be excluded from the transfer in business transfers by special succession.

In the case of a share sale, the liability of the seller can be contractually limited qualitatively and quantitatively in accordance with the provisions of the Civil Code only for simple negligence. Specific assets can be contractually excluded from the transferred business.

In the case of a business transfer effected by a universal succession, the absorbing company or the new company, as the case may be, will acquire by operation of law all assets and liabilities referring to the specific business, pursuant to the relevant provisions of the Corporate Transformation Law. Article 479 of the Civil Code does not apply.

Despite the occurrence of the universal succession, the Greek Corporate Transformations Law, in compliance with European legislation, introduces special protection in favour of the creditors of a demerged entity. More specifically, according to article 65, paragraph 4 of the Greek Corporate Transformations Law, in so far as a claim of a creditor of the demerged company that has been transferred to the beneficiary entity has not been satisfied, the beneficiary (ie, the recipient) companies shall be jointly and severally liable for this claim. However, this liability is limited up to the net value of the assets transferred by the demerged company to each of these beneficiary companies. In addition, in the case of a partial demerger or a spin-off, the demerged entity is also liable itself for such creditors' claims. Claims against the jointly and severally liable companies are subject to a five-year statute of limitation, starting from the completion of the demerger or the spin-off.

In respect of the consents required, in the case of corporate transformations, if a société anonyme or a European company is involved or created as a result of the transformation taking place, the approval of the competent public authority for the perfection of the corporate transformation is required. All administrative licences related to the underlying business are automatically transferred by operation of law.

For the corporate transformation to be completed, the consent of an increased majority of all categories of shareholders is required to the extent their rights are affected by the transformation. Creditors also have the right to object, but remedies may be offered in return for the transformation to be completed. The relevant regulatory consents for the acquisition of control (eg, merger control clearance if the relevant thresholds are triggered or, in the case of regulated entities, any relevant clearances) should also be obtained before the closing of the transaction, to the extent they are applicable.

In the case of a transfer of business through special succession, consents must be requested by the creditors before the assumption of the relevant liabilities, and notification must be made to the holders of the rights assigned thereunder. Furthermore, new administrative licences (to the extent they are applicable and necessary for the business transferred) should be obtained.

In a share sale, the issuance of new administrative licences is not necessary in principle, but it largely depends on the specific characteristics of the given licence and whether there is any change of control provisions in the licence. The relevant regulatory consents for the acquisition or change of control (eg, merger control clearance if the relevant thresholds are triggered or, in the case of regulated entities, any relevant clearances) should also be obtained before the closing of the transaction, to the extent they are applicable.

*Law stated - 02 August 2023*

## Consents

Are there any legal, regulatory or governmental restrictions on the transfer of shares in a company, a business or assets in your jurisdiction? Do transactions in particular industries require consent from specific regulators or a governmental body? Are transactions commonly subject to any public or national interest considerations?

Prior approval must be obtained to acquire holdings in:

- credit and financial institutions 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 or other entities supervised by the Hellenic Capital Market Commission;
- gaming companies by the Hellenic Gaming Commission; and
- certain energy companies by the Regulatory Authority for Energy.

In principle, there are no provisions or restrictions on foreign ownership in Greece. Nonetheless, bearing in mind the EU Foreign Direct Investment (FDI) Screening Regulation, which generally encourages the development of national FDI regimes, there is an ongoing consultative process in Greece that is expected to result in the adoption of an FDI mechanism. However, there are no further details available regarding the timing of the potential adoption of such a mechanism.

Mergers between a Greek legal entity and an entity governed by the law of a non-EU member state will also be accepted, with the application by analogy of article 45 of the Corporate Law on minority shareholders' right to request that the *société anonyme* buy their shares. However, article 25(1) of Law 1892/1990 prohibits:

- any transaction between living persons 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 company that owns real estate in those areas.

In addition, certain sectors may have restrictions on foreign ownership (eg, the provisions governing the gas market applied to the privatisation of the Hellenic Gas Transmission System Operator SA as the Greek independent gas transmission operator).

Greece has also enacted Law 4864/2021 on strategic investments, which provides for substantial incentives (eg, taxation incentives, fast permit granting incentives) with regard to investments that, because of their strategic importance for the national or regional economy, may boost the employment, productive resurrection, and the promotion of the national and cultural environment of Greece. Law 4864/2021 provides for the assessment and screening of strategic investments, following which a decision is issued by the Interministerial Committee for Strategic Investments on whether the investment should be characterised as 'strategic' and on the incentives that shall be granted. It is worth noting that Law 4864/2021 does not pose any nationality restriction and as such it may cover both European and third-party investors.

Finally, the EU's Foreign Subsidies Regulation (FSR), which began to apply in Greece on 12 July 2023, addresses distortions caused in the internal market by foreign subsidies granted by non-EU countries. The FSR targets all companies that generate turnover in the EU and that have received any form of direct or indirect financial contribution from a non-EU country. It will mainly affect M&A transactions as well as public procurement procedures, entailing notification requirements in certain cases where the respective thresholds included in the FSR are triggered.

*Law stated - 02 August 2023*

### Are any other third-party consents commonly required?

No, unless there is a provision to this effect included in the target company's articles of association.

In the case of corporate transformations, approval by an increased majority of each and every class of shareholders of the companies limited by the shares involved is required to the extent that their rights are affected by the transformation.

### Regulatory filings

Must regulatory filings be made or registration (or other official) fees paid to acquire shares in a company, a business or assets in your jurisdiction?

Regulatory filings must be made to the extent that certain thresholds are triggered (eg, in the case of merger control clearance for the acquisition of control) or certain percentages of holdings are acquired (in the case of specific regulated entities) prior to completion. Fees may be paid to certain authorities, such as the Hellenic Competition Commission, for the review of the cases brought before them.

Law stated - 02 August 2023

## ADVISERS, NEGOTIATION AND DOCUMENTATION

### Appointed advisers

In addition to external lawyers, which advisers might a buyer or a seller customarily appoint to assist with a transaction? Are there any typical terms of appointment of such advisers?

Legal, financial and tax advisers in respect of the legal, financial and tax due diligence, respectively, and the structuring of the transaction are usually engaged. To the extent required owing to the nature of the activities of the target company, a technical adviser may also be appointed.

The terms of engagement are determined on an ad hoc basis, with the exception of clauses that are dictated by mandatory provisions of law from which there cannot be contractual derogation or that apply by operation of law without them being included *expressis verbis* in the terms of engagement.

Law stated - 02 August 2023

### Duty of good faith

Is there a duty to negotiate in good faith? Are the parties subject to any other duties when negotiating a transaction?

Counterparties are obliged (in the case of Greek law-governed agreements) to negotiate in good faith.

Directors of the target company have a duty of care towards the company as a legal entity that also applies to M&A transactions. More specifically, under Law 4548/2018, directors have a duty to administer the corporate affairs with a view to promoting the company's interests.

Law stated - 02 August 2023

### Documentation

What documentation do buyers and sellers customarily enter into when acquiring shares or a business or assets? Are there differences between the documents used for acquiring shares as opposed to a business or assets?

Documents entered into vary depending on the stage of the transaction, the structure of the acquisition and the nature

of the asset or business acquired. Preliminary agreements may include a non-binding memorandum of understanding outlining the mutual understanding of the parties on the structure of the acquisition, and a confidentiality undertaking regarding the secrecy of commercially or otherwise sensitive information.

In some cases, an exclusivity agreement is also entered into, by which the sellers 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 of the target.

The main documentation for the acquisition or disposal includes a sale and purchase agreement or an asset transfer agreement, and a shareholders' agreement if the buyer does not acquire 100 per cent of the capital of the target.

In the case of acquisitions made under a special regime (ie, pursuant to the Corporate Transformations Law), the documentation provided for by such special regulation will also be used (eg, the parties involved issue the draft and the final merger or spin-off agreement, the latter mandatorily being a notarial deed in the case that a société anonyme or a limited liability company is involved as well as in all other cases provided by the Greek Corporate Transformations Law).

*Law stated - 02 August 2023*

### Are there formalities for executing documents? Are digital signatures enforceable?

As a general rule, there are no formalities for the execution of documents; however, specific types of documents (eg, agreements for the transfer of real estate, the final merger or demerger deed involving a société anonyme or a limited liability company) must be notarised to be validly executed.

Pursuant to Regulation (EU) No. 910/2014 of the European Parliament and of the Council, and the Greek Law 4727/2020 on digital governance, a qualified electronic signature, namely an advanced electronic signature, that is based on a qualified certificate and created by a qualified electronic signature creation device has the equivalent legal effect of a handwritten signature. An advanced electronic signature is an electronic signature that is uniquely linked to the signatory, capable of identifying the signatory, created using means that the signatory can maintain under its sole control and linked to the data signed therewith in such a manner that any subsequent change of the data is detectable.

If a notarial process is required for the execution of a document, electronic signatures are not acceptable, owing to the fact that the signatory must physically appear before the notary public.

Finally, Greek Law 4727/2020 does not include provisions in relation to the signing via electronic signature of share certificates and other securities. Thus, in the absence of any legislative provision allowing for such 'electronic' securities signed by electronic signature, share titles and other securities are signed by handwritten signature.

*Law stated - 02 August 2023*

## DUE DILIGENCE AND DISCLOSURE

### Scope of due diligence

What is the typical scope of due diligence in your jurisdiction? Do sellers usually provide due diligence reports to prospective buyers? Can buyers usually rely on due diligence reports produced for the seller?

No legal requirements exist for the performance of due diligence in Greece. A typical buyer will arrange for legal, financial and tax due diligence exercises before deciding on an acquisition. Depending on the type of activity with which the target is engaged, a technical or environmental due diligence exercise may also be advisable. In any event, due diligence is based on the buyer's risk profile.

Sellers may also provide vendor due diligence reports to prospective buyers, most frequently in cases of a bidding sale process. Buyers may rely on due diligence reports produced by the seller to the extent that the advisers have consented to such reliance and the buyer's internal policies permit it to rely on an adviser whose duty of care is primarily owed to the seller. Usually, the buyer also conducts its own due diligence, though this will be mostly confirmatory in nature.

*Law stated - 02 August 2023*

### **Liability for statements**

**Can a seller be liable for pre-contractual or misleading statements? Can any such liability be excluded by agreement between the parties?**

In the case of Greek law-governed agreements, parties are obliged by law to act in good faith and in accordance with good morals and business practices.

Pre-contractual liability applies to losses caused to one counter-party by the other counter-party's wilful misconduct or negligence. In such a case, the non-breaching party is entitled to recover only the 'negative interest', which comprises the expenses incurred during the negotiations and compensation for the loss of opportunity to conclude another contract with a third person.

The non-breaching party cannot be compensated for any profit that would have resulted had the contract been concluded. The latter may be recovered only in the case of contractual liability.

The parties cannot validly agree to exclude pre-contractual liability in the case of gross negligence or wilful misconduct.

*Law stated - 02 August 2023*

### **Publicly available information**

**What information is publicly available on private companies and their assets? What searches of such information might a buyer customarily carry out before entering into an agreement?**

The Commercial Registry includes information on a company's articles of association, representation, published financial statements and good standing, as well as on any other document that is required by law to be registered and publicly available. Certificates can be issued on those matters upon request.

In addition, a publicly available digital insolvency registry has been established in Greece. The digital insolvency registry includes information on bankruptcy petitions, bankruptcy declaration decisions, as well as any other petition or matter that needs to be published under the Greek insolvency law (in accordance with Law 4738/2020).

There are also publicly available records in land registries and cadastres on rights in rem effected on real estate property and assignments on business receivables. Search and review is publicly accessible, provided that one knows the particulars of the assets under review and their owners.

*Law stated - 02 August 2023*

### **Impact of deemed or actual knowledge**

**What impact might a buyer's actual or deemed knowledge have on claims it may seek to bring against a seller relating to a transaction?**

In the case of Greek law-governed contracts, a buyer's actual knowledge may reduce or eliminate the buyer's ability to seek compensation for losses arising from a breach of representations and warranties provided by the seller. The

parties can contractually agree otherwise in the context of an indemnity.

*Law stated - 02 August 2023*

## **PRICING, CONSIDERATION AND FINANCING**

### **Determining pricing**

How is pricing customarily determined? Is the use of closing accounts or a locked-box structure more common?

Both methods of pricing are used, depending on the general trends in M&A transactions at a given time.

*Law stated - 02 August 2023*

### **Form of consideration**

What form does consideration normally take? Is there any overriding obligation to pay multiple sellers the same consideration?

The vast majority of acquisitions and disposals involve cash consideration; however, this depends on the specificities of each transaction. For example, in the case of M&A in the technology sector, where the founders may need to remain in the structure, shares and earn-outs are usually included in the consideration.

There is no generally applicable limitation that prohibits a buyer from paying different considerations to multiple sellers in a private M&A transaction.

*Law stated - 02 August 2023*

### **Earn-outs, deposits and escrows**

Are earn-outs, deposits and escrows used?

These arrangements are typically used, depending mainly on the industry and the perceived risks of the parties involved.

*Law stated - 02 August 2023*

### **Financing**

How are acquisitions financed? How is assurance provided that financing will be available?

Acquisitions are usually financed by the buyer's own funds, including new equity and debt (either through the issuance of notes by the buyer or a loan facility granted to the buyer). The buyer often raises funds with the view to financing the transaction (acquisition financing), especially by using external financing. The availability of funds is proven by providing a letter of guarantee, a commitment letter or other proof of funds.

*Law stated - 02 August 2023*

### **Limitations on financing structure**

Are there any limitations that impact the financing structure? Is a seller restricted from giving financial assistance to a buyer in connection with a transaction?

There are no general limitations set by Greek law on how to finance the acquisition, apart from restrictions under Law 4548/2018, such as those relating to financial assistance (in case a whitewash process cannot be followed) or related-party transactions.

*Law stated - 02 August 2023*

## CONDITIONS, PRE-CLOSING COVENANTS AND TERMINATION RIGHTS

### Closing conditions

Are transactions normally subject to closing conditions? Describe those closing conditions that are customarily acceptable to a seller and any other conditions a buyer may seek to include in the agreement.

Transactions are normally subject to closing conditions, the latter usually referring to merger control, other regulatory clearances, other regulatory compliance requirements or the satisfaction of requirements provided for by agreements that are material for the operation or financial condition of the target and that are triggered by the contemplated acquisition or disposal (eg, change of control clauses).

Non-occurrence of a material adverse effect event or a material (ie, exceeding a certain amount) breach of the seller warranties may also be included as a condition precedent.

Transaction documentation may also include clauses requiring the buyer to take on all of the antitrust risk in a transaction (by undertaking all actions necessary to satisfy antitrust or regulatory requirements for the acquisition to close), known as hell or high water provisions. In certain cases, the agreement may also include a closing condition requiring that the antitrust or regulatory approval should have been received and does not include any burdensome conditions or similar wording (defining also the scope of such burdensome conditions).

*Law stated - 02 August 2023*

What typical obligations are placed on a buyer or a seller to satisfy closing conditions? Does the strength of these obligations customarily vary depending on the subject matter of the condition?

The parties are free to agree on the level of diligence and effort that the buyer must have when undertaking action to fulfil the closing conditions without any limitation, apart from the obligation to respect (in cases of Greek law-governed agreements) the generally applicable principles of Greek law (eg, good faith and transactional ethics).

*Law stated - 02 August 2023*

### Pre-closing covenants

Are pre-closing covenants normally agreed by parties? If so, what is the usual scope of those covenants and the remedy for any breach?

Pre-closing covenants are common. They largely refer to the conduct of business in the ordinary course between the signing of the sales agreement and completion of the transfer. Breach of these covenants could result in the adjustment of the consideration or the buyer having the right to walk away or claim compensation.

*Law stated - 02 August 2023*

## Termination rights

Can the parties typically terminate the transaction after signing? If so, in what circumstances?

In the case of agreements governed by Greek law, it is not usual that the parties agree on a termination right applying after the signing and before the transfer of the asset or business. This is with the exception of termination rights triggered by a material adverse change that would render the continuation of the agreement economically and unduly burdensome for one of the counterparties; the regulatory clearance required for the acquisition or disposal not being obtained by an agreed date; or there being a material breach of warranty (usually if a certain threshold amount of losses is exceeded).

*Law stated - 02 August 2023*

Are break-up fees and reverse break-up fees common in your jurisdiction? If so, what are the typical terms? Are there any applicable restrictions on paying break-up fees?

To date, deal protection is not heavily practised in Greece. Break-up fees that are in principle enforceable have been agreed upon in a relatively small number of cases. However, as there is no published case law, their enforceability has not yet been tested. In the case of Greek law-governed contracts, limitations based on general principles of law (ie, abusive exercise of rights) will apply.

Further, to mitigate the risk of not receiving the necessary approvals for the transaction (eg, approval from a competition commission), the parties often set the granting of the relevant approvals as conditions precedent for closing.

If any party unduly terminates 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 certain cases, break-up fees are agreed upon, but they can be reduced by the court if it finds them to be excessive.

*Law stated - 02 August 2023*

## REPRESENTATIONS, WARRANTIES, INDEMNITIES AND POST-CLOSING COVENANTS

### Scope of representations, warranties and indemnities

Does a seller typically give representations, warranties and indemnities to a buyer? If so, what is the usual scope of those representations, warranties and indemnities? Are there legal distinctions between representations, warranties and indemnities?

Representations, warranties and indemnities are usually agreed upon and typically cover:

- title to the shares and assets;
- the amount and composition of the share capital of the target;
- past tax and other liabilities in respect of the Greek state or other Greek public law entities;
- accuracy of financial statements;
- lack of encumbrances on assets;
- good standing (including solvency status), regulatory compliance and compliance with law, including on environmental matters (to the extent relevant);
- intellectual property;

- compliance with data protection legislation; and
- employment issues.

Specific items are added to the above depending on the target's sector and the due diligence findings as well as business-specific representations.

Where the relevant agreement is governed by Greek law, representations and warranties are mainly regulated by article 534 et seq of the Civil Code and are treated in the same way in terms of the liability borne by the seller in the case of a breach. Influenced by common law contracts of sale and not by operation of law, representations and warranties are typically qualified by the information provided to the buyer during the due diligence exercise.

It is also possible to agree on indemnities as independent contractual obligations that are acceptable under private contract law.

*Law stated - 02 August 2023*

### **Limitations on liability**

**What are the customary limitations on a seller's liability under a sale and purchase agreement?**

No substantial limitations to the types of warranty that may be given are provided for under Greek law. The customary limitations on a seller's liability under a sale and purchase agreement are limitations on time and quantum (eg, de minimis amounts and overall cap amounts and tipping baskets to apply for all claims arising from the agreement or in respect of specific claims that depend, among other things, on relevant due diligence findings, risk tolerance of the counter-parties and other related factors), similar to the ones in other jurisdictions.

Limitations in respect of liability do not apply, even if agreed between the parties, in the case of gross negligence or wilful misconduct of the liable party, pursuant to article 332 of the Civil Code. Moreover, according to article 275 of the Civil Code, the parties may neither reduce nor extend the statute of limitations, which is two years regarding movables (including shares) and five years regarding real estate properties. It is further noted that the standard statute of limitation provided for tax claims (ie, the imposition of any taxes and tax penalties or interest) is also five years after the lapse of the year within which the deadline for submitting a tax return expires.

Extension of the statute of limitations is achieved under Greek law by the warranty period that the seller may provide according to article 556 of the Civil Code or on the basis of the 'independent strict liability' provided by the seller under the provisions pertaining to guarantees, in which case the statute of limitations is 20 years.

*Law stated - 02 August 2023*

### **Transaction insurance**

**Is transaction insurance in respect of representation, warranty and indemnity claims common in your jurisdiction? If so, does a buyer or a seller customarily put the insurance in place and what are the customary terms?**

The use of transaction insurance is increasing in Greek deals, especially in high value transactions. Warranty and indemnity (W&I) insurance is usually put in place by a buyer before the signing of the sale and purchase agreement (SPA) or the closing of the transaction, is usually payable by the seller or both parties equally, and covers the representations and warranties provided by the seller and indemnities provided under the SPA. W&I insurance is paid via a premium, payable in full when the policy is taken out. Typically, a premium is calculated as a percentage of the

total limit of insurance coverage. With regards to timing, in principle the timeframe for the inception of the insurance is tight; as such, the process (ie, from the initial indicative offering to the policy inception) will usually last about two to three weeks but may take longer depending on the complexity of the transaction. Typical exclusions in the insurance cover include the disclosures in the SPA, due diligence findings, forward-looking warranties, wilful misconduct and fraud, as well as warranties referring to bribery and corruption or other areas of risk that the insurers do not deem appropriate for their policy.

*Law stated - 02 August 2023*

## Post-closing covenants

Do parties typically agree to post-closing covenants? If so, what is the usual scope of such covenants?

There is no standard market practice on this matter. This largely depends on the risk that the parties are willing to undertake and the nature of the assets or business transferred. They are sometimes used to address or rectify issues that cannot be addressed until closing. Post-closing covenants are less usual in asset deals.

*Law stated - 02 August 2023*

## TAX

### Transfer taxes

Are transfer taxes payable on the transfers of shares in a company, a business or assets? If so, what is the rate of such transfer tax and which party customarily bears the cost?

Assuming that the cause of transfer is exclusively sale (ie, not donation or inheritance, etc), the following apply.

### Income tax

#### Individuals (acting in a non-business capacity)

##### Greek tax residents

Capital gains from the transfer of shares or of a business are taxed at 15 per cent. Capital gains from the transfer of listed shares, where the seller owns less than 0.5 per cent of the share capital of the company, are exempted from income tax.

Capital gains from other assets are taxed depending on the type of asset. Capital gains from real property are exempted from income tax until 31 December 2024. Capital gains from the transfer of securities or financial derivatives are taxed at 15 per cent. Transfer of most other assets are not subject to income tax, assuming that the capital gains generated are not deemed to be income from business activity.

##### Non-Greek tax residents

Capital gains from the transfer of shares, of a business, of other securities or of financial derivatives are exempted from tax where the seller is a tax resident in a jurisdiction with which Greece has entered into a double taxation avoidance treaty and upon presentation of documentation proving tax residence. Otherwise, capital gains from the transfer of shares, a business or other assets are taxed as described above for Greek tax residents.

## Legal entities

### Greek tax residents

Capital gains from the transfer of shares, of a business or of other assets will be treated as income from business activity and are included in the calculation of the annual profits of the legal entity.

Taxable profits are currently taxed at a rate of 22 per cent (29 per cent for credit institutions participating in the scheme, allowing for the conversion of deferred tax assets into final claims against the state under certain circumstances).

### Non-Greek tax residents

Capital gains will only be deemed income generated in Greece where they are realised through a permanent establishment in Greece, in which case the income would be taxed as above for Greek tax residents. This will always be the case as regards real estate.

## Transaction taxes

### Shares

Share sales are exempted from value-added tax (VAT) and stamp duty. 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.

### Business

Where a business (or its assets as a whole, without its liabilities) is transferred, and both the transferor and transferee are liable to VAT and the transferee shall continue the business, the transfer falls outside the scope of VAT (ie, is not considered a supply of goods) but is subject to stamp duty, generally at a rate of 2.4 per cent.

Where the transferor or the transferee either supply goods or services that are exempted from VAT or are themselves exempted from VAT, the transfer will be subject to VAT (the general rate is 24 per cent), although it will be exempted from VAT where the transferor and the business are not liable to VAT, in which case stamp duty at a rate of 2.4 per cent will be applicable.

VAT is paid by the buyer. Stamp duty is owed jointly by both parties and who will bear the cost and to what degree is a matter of agreement. Arguably, lacking a specific agreement, the cost will be divided equally *inter partes*.

### Assets

Taxation depends on the type of asset. For example, regarding real estate, transfer tax is generally 3 per cent plus a municipal tax equal to 3 per cent of the transfer tax (effectively 0.09 per cent). To this, the registration costs with the land registry are added, which are currently approximately 5.75 per cent to 5.95 per cent (in some cases, plus VAT), as well as the public notary fees calculated on the basis of a regressive graduated scale from 8 per cent to 1 per cent.

The above are calculated over the value of the sale or a notional value (called the 'objective value') of the real property, whichever is higher. Newer real property is also subject to VAT at a rate of 24 per cent, which may in some cases, as at the time of writing, be suspended until the end of 2024.

*Law stated - 02 August 2023*

## **Corporate and other taxes**

Are corporate taxes or other taxes payable on transactions involving the transfers of shares in a company, a business or assets? If so, what is the rate of such transfer tax and which party customarily bears the cost?

Regarding income generated for legal persons and legal entities, the following apply.

### **Income tax**

#### **Legal persons and legal entities that are Greek tax residents**

Capital gains from the transfer of shares, of a business or of other assets are treated as income from business activity and are included in the calculation of the annual profits of the legal entity.

Taxable profits are taxed currently at a rate of 22 per cent (29 per cent for credit institutions participating in the scheme, allowing for the conversion of deferred tax assets into final claims against the state under certain circumstances).

#### **Legal persons and legal entities that are not Greek tax residents**

Capital gains will only be deemed income generated in Greece where they are realised through a permanent establishment in Greece, in which case the income would be taxed as above.

### **Transaction taxes**

#### **Shares**

Share sales are exempted from VAT and stamp duty. 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.

#### **Business**

Where a business (or its assets as a whole, without its liabilities) is transferred, and both the transferor and transferee are liable to VAT, and the transferee shall continue the business, the transfer falls outside the scope of VAT (ie, is not considered a supply of goods) but is subject to stamp duty generally at a rate of 2.4 per cent.

Where the transferor or the transferee either supply goods or services that are exempted from VAT or are themselves exempted from VAT, the transfer will be subject to VAT (the general rate is 24 per cent), although it will be exempted from VAT where the transferor and the business are not liable to VAT, in which case stamp duty at a rate of 2.4 per cent will apply.

VAT is paid by the buyer. Stamp duty is owed jointly by both parties and who will bear the cost and to what degree is a matter of agreement. Arguably, lacking a specific agreement, the cost will be divided equally *inter partes*.

#### **Assets**

Taxation depends on the type of asset. For example, regarding real estate, transfer tax is generally 3 per cent plus a

municipal tax equal to 3 per cent of the transfer tax (effectively, in practice, 0.09 per cent). One must add to this the registration costs with the land registry of currently approximately 5.75 per cent to 5.95 per cent (in some cases, plus VAT), as well as public notary fees calculated on the basis of a regressive graduated scale from 8 per cent to 1 per cent. The above are calculated over the value of the sale or a notional value (known as the objective value) of the real property, whichever is higher. Newer real properties are also subject to VAT at a rate of 24 per cent, currently eligible for suspension until the end of 2024.

*Law stated - 02 August 2023*

## **EMPLOYEES, PENSIONS AND BENEFITS**

### **Transfer of employees**

Are the employees of a target company automatically transferred when a buyer acquires the shares in the target company? Is the same true when a buyer acquires a business or assets from the target company?

When the shares of a target company are acquired, only the shareholders – and eventually the control – change in the target company; its employees remain employees of the target company.

However, when a buyer acquires a business or part of a business from the target company, the employees dedicated to the business will in principle be automatically transferred to the entity that will acquire the business. In this case, Presidential Decree 178/2002, which implemented Council Directive 98/50/EC of 29 June 1998, relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, provides that the rights and obligations from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the buyer. The same may be true where assets are acquired that qualify as business from a labour perspective, irrespective of their qualification tax-wise.

*Law stated - 02 August 2023*

### **Notification and consultation of employees**

Are there obligations to notify or consult with employees or employee representatives in connection with an acquisition of shares in a company, a business or assets?

The seller and buyer must inform the representatives of the employees affected by the transfer of the date or proposed date of the transfer; its reasons; the legal, economic and social implications of the transfer for the employees; and any measures envisaged in relation to the employees.

Such information must be provided to the employee representatives, or in writing to the employees individually if there are no representatives, in due time before the transfer in any event and, with regard to the employees of the buyer, before they are affected by the transfer in respect of their work and employment conditions. Consultation is required when the seller or buyer envisages measures that will change the employment status of the employees, in which case they must consult on such measures with the employee representatives in due time.

Presidential Decree 240/2006, which implemented Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, establishes a general framework for informing employees and consulting with them.

*Law stated - 02 August 2023*

## Transfer of pensions and benefits

Do pensions and other benefits automatically transfer with the employees of a target company?  
Must filings be made or consent obtained relating to employee benefits where there is the acquisition of a company or business?

Benefits usually transfer automatically, including those provided by collective labour agreements and internal labour regulations.

As far as pensions are concerned, the statutory pension plan applicable to all employees in Greece continues to apply automatically in transferred employees.

In respect of private pension plans (either offered by private insurance companies or operating as special accounts within the transferred business), Presidential Decree 178/2002 provides the following:

- if the buyer agrees to the terms of the existing agreements, the relevant policies are renewed;
- if the buyer agrees to the continuation of the plan on different terms, the buyer consults with the employees and the seller and signs a new agreement;
- if the plan is provided by an insurance company or a private fund, the representative of the insurance company or the trustee of the private pension fund is invited to the consultation to submit suggestions, taking into account the existing reserves or credit balance of the pension funds' deposits; and
- if the buyer disagrees with the continuation of the plan (before the transfer), the relevant funds are liquidated (wound up) and distributed to the employees.

If there are no employees' councils in the transferred company (and, according to Law 1767/1988, the employees of a company with at least 50 employees have the right to elect such councils), a committee made up of at least three employees will be elected by the employees to participate in the above consultation, liquidation and distribution.

*Law stated - 02 August 2023*

## UPDATE AND TRENDS

### Key developments

What are the most significant legal, regulatory and market practice developments and trends in private M&A transactions during the past 12 months in your jurisdiction?

In relation to market practice developments, the financial services, energy, and technology, media and telecom sectors, as well as private equity transactions in certain developing sectors in Greece, were the main drivers in M&A activity over the past 12 months. A considerable number of deals related to strategic minority investments and the establishment of strategic cooperations and joint ventures with a view to creating significant synergies from combining know-how and skills (especially technological expertise) and as a means of risk sharing. Private equity investors frequently targeting small and medium-sized entities with high growth potential continued to play an active role in M&A activity.

In addition, corporate restructurings and transformations proved to be a valuable tool in the context of implementing M&A transactions and have been increasingly used as a method of divesting non-core business assets (eg, through spin-offs), and as a tool for enabling businesses that face challenges in their financial outlook to optimise their balance sheets. Corporate transformations have been generally combined with Greek tax incentive laws that allow parties to achieve a tax-neutral outcome (eg, Greek Law 4172/2013), as well as allowing parties to simplify the transfer process

of real estate assets. For instance, the recent Law 5036/2023 introduced such a simplification, according to which if the parties apply Greek Law 4172/2013, the registration of a transfer of real estate assets requires only the submission of an extract of the merger agreement or the articles of association along with a report identifying the transferred properties, without the need to file any additional certificates or declarations (eg, engineers' certificates), the issuance of which resulted in considerable delays in practice.

Finally, the significance of environmental and sustainability considerations in evaluating M&A activities is continuously increasing, with the focus being on investments in greener and more renewable energy sources. In the same context, Greek Law 4887/2022 has introduced favourable provisions for investments aiming at the protection of the environment, the environmental upgrade of businesses and the transition to greener sources of energy.

*Law stated - 02 August 2023*

## Jurisdictions

	<b>Austria</b>	Schindler Attorneys
	<b>Brazil</b>	Campos Mello Advogados
	<b>Denmark</b>	Gorrissen Federspiel
	<b>Dominican Republic</b>	Guzmán Ariza
	<b>Egypt</b>	Soliman, Hashish & Partners
	<b>Finland</b>	Waselius & Wist
	<b>Greece</b>	Karatzas & Partners Law Firm
	<b>Hong Kong</b>	Davis Polk & Wardwell LLP
	<b>Indonesia</b>	Makes & Partners
	<b>Japan</b>	Mori Hamada & Matsumoto
	<b>Latvia</b>	VILGERTS
	<b>Malaysia</b>	Foong and Partners
	<b>Myanmar</b>	Myanmar Legal MHM Limited
	<b>Norway</b>	Aabø-Evensen & Co
	<b>Philippines</b>	Zambrano Gruba Caganda & Advincula
	<b>Romania</b>	MPR Partners
	<b>Serbia</b>	Stankovic & Partners NSTLaw
	<b>Singapore</b>	WongPartnership LLP
	<b>South Korea</b>	Yulchon LLC
	<b>Switzerland</b>	Homburger
	<b>Turkey</b>	Turunç
	<b>United Kingdom</b>	Davis Polk & Wardwell LLP
	<b>USA</b>	Davis Polk & Wardwell LLP
	<b>Zambia</b>	Dentons Eric Silwamba Jalasi & Linyama