21

Greece

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I Introduction 29
II Scope of the new rules 29
III Cash payment 30
IV Legal consequences and enforceability of a cross-border merger 30
V Procedure 31
 1 The draft terms of the cross-border merger 31
 2 Management report 33
 3 Auditor's report 33
 4 General meeting of shareholders 35
  A Information for shareholders 35
  B Shareholder approval 35
 5 Pre-merger certificate 36
 6 Effects of the decision 37
VI Minority shareholders 38
VII Protection of creditors 39
VIII Employee participation 39
IX Tax treatment 40

I Introduction

1. The Cross-border Merger Directive has been implemented in Greece pursuant to law 3777/2009[1] (the 'Greek Law on Cross-border Mergers'). This law was enacted as a separate piece of corporate legislation regarding specifically cross-border mergers, which is supplemented by relevant provisions of existing company legislation, depending on the type of legal form.

II Scope of the new rules

2. The Greek Law on Cross-border Mergers applies to all Greek limited liability companies, as these are set out in the First Company Law Directive

1 Greek Government Gazette Issue A, no. 127 of 28 July 2009.

(68/151/EEC) (i.e. *societes anonymes* (ανώνυμες εταιρίες), private limited liability companies (εταιρίες περιορισμένης ευθύνης) and limited partnerships by shares (ετερόρρυθμες κατά μετοχές εταιρίες)[2] and to European companies (SE) whose seat is located in Greece. Moreover, the Greek Law on Cross-border Mergers also applies to companies with share capital and having legal personality, possessing separate assets, which alone serve to cover its debts, and subject, under national law governing it, to conditions concerning guarantees such as are provided for by the First Company Law (68/151/EEC) for the protection of the interests of members and other third parties.

The provisions of the Greek Law on Cross-border Mergers apply to mergers of one or more Greek companies, as per above, with one or more limited liability companies established according to the law of another Member State of the European Union and which have their registered office, central administration or principal place of business within the Community or when the company resulting from the cross-border merger of companies from different Member States has its registered address in Greece (Art. 1(2) Greek Law on Cross-border Mergers).

3. The Greek Law on Cross-border Mergers does not apply to cross-border mergers involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company (Art. 1(3) Greek Law on Cross-border Mergers). Under Greek law, such companies are governed by the law 3283/2004.

III Cash payment

4. By exception to the provisions of Article 68 of Greek Codified Law 2190/1920 regarding Greek *societes anonymes* restricting the amount of cash payable to shareholders upon merger, the Greek Law on Cross-border Mergers permits the payment of cash exceeding 10 per cent of the nominal value or, in the absence thereof, the accounting value of the securities or shares representing the capital of the company arising from the cross-border merger, provided the law of the Member State of one of the participating companies so allows (Art. 2(3) Greek Law on Cross-border Mergers).

IV Legal consequences and enforceability of a cross-border merger

5. In accordance with Article 12(1) and (2) of the Greek law, once the cross-border merger has been registered with the General Commercial Register maintained

2 First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ L65, 14.3.1968, p. 8).

with the Greek Ministry of Development (now called the Ministry of Economy, Competitiveness and Marine), the following legal consequences apply:

(i) all assets and liabilities of the companies being acquired are transferred to the acquiring company without liquidation of the acquired companies;
(ii) the partners or shareholders of the companies being acquired become partners or shareholders of the acquiring company; and
(iii) the companies being acquired cease to exist without liquidation.

Following the registration of the cross-border merger with the General Commercial Register, the merger can no longer be held as null and void (Art. 15 Greek Law on Cross-border Mergers) by anyone.

There is no exchange of shares issued by the acquiring company in consideration for shares in the company/companies being acquired in the following cases:

(i) when the shares in the company/companies being acquired are owned by the acquiring company or by third parties acting in their own name but on behalf of the acquiring company; or
(ii) when the shares in the company/companies being acquired are owned by the companies themselves or by third parties acting in their own name but on behalf of the company/companies being acquired.

6. If, in the case of a cross-border merger, Greek law requires the completion of special formalities before the transfer of certain assets, rights and obligations belonging to the merging becomes effective against third parties, these formalities are carried out by the company resulting from the cross-border merger (Art. 12(3) Greek Law on Cross-border Mergers).

The rights and obligations of the merging companies arising from contracts of employment or from employment relationships and existing at the date on which the cross-border merger takes effect are transferred to the company resulting from the cross-border merger on the date on which the cross-border merger is registered with the General Commercial Register (Art. 12(4) Greek Law on Cross-border Mergers).

V Procedure

1 The draft terms of the cross-border merger

7. The management or administrative bodies of each of the merging companies must draw up the common draft terms of the cross-border merger. In accordance with Article 3 of the Greek Law on Cross-border Mergers, the common draft terms of cross-border merger must include at least the following:

(i) the legal form, name and registered office of the merging companies and the respective data for the company resulting from the cross-border merger;

(ii) the ratio applicable to the exchange of securities or shares representing the company capital and the amount, if applicable, of any cash payment;
(iii) the terms for the allotment of securities or shares representing the capital of the company resulting from the cross-border merger;
(iv) the likely repercussions of the cross-border merger on the labour situation of the employees;
(v) the date from which the holding of securities or shares representing the company capital will entitle the holders to share in profits and any special conditions affecting that entitlement;
(vi) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the company resulting from the cross-border merger;
(vii) the rights conferred by the company resulting from the cross-border merger on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them;
(viii) any special advantages granted to the experts who examine the draft terms of the cross-border merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;
(ix) the statutes of the company resulting from the cross-border merger;
(x) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the company resulting from the cross-border merger are determined pursuant to Article 14 of the Greek Law on Cross-border Mergers;
(xi) information on the evaluation of the assets and liabilities which are transferred to the company resulting from the cross-border merger;
(xii) dates of the merging companies' accounts used to establish the conditions of the cross-border merger.

In the event a parent company merges with its wholly owned subsidiary, items (ii), (iii) and (v) above can be omitted (Art. 13(a) Greek Law on Cross-border Mergers).

In accordance with Article 76(1) of the Greek Codified Law on *public limited liability companies*, members of the Board of Directors of the merging companies can be held liable to the shareholders of these companies or to third parties for any damage resulting from the preparation and conclusion of the merger.

8. According to Article 4 of the Greek Law on Cross-border Mergers, a Greek company participating in a cross-border merger, either as the acquiring or acquired company, must first submit the common draft terms of the cross-border merger for review by the Department of Public Limited Liability Companies and Credit within the General Secretariat of Commerce of the

Ministry of Development. Following the review, the common draft terms are filed with the General Commercial Register held in the General Secretariat of Commerce at least one (1) month before the shareholders' meeting is convened to decide on the cross-border merger. In addition, an extract of the common draft terms must be published in the Greek Government Gazette, which must contain the following information:

(i) the type, name and registered office of every merging company;
(ii) the register in which the documents referred to in Article 3(2) of the First Company Law Directive (68/151/EEC) are filed in respect of each merging company, and the number of the entry in that register;
(iii) an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors and of any minority members of the merging companies and the address at which complete information on those arrangements may be obtained free of charge.

2 Management report

9. In accordance with Article 5 of the Greek Law on Cross-border Mergers, the management or administrative organ of the Greek merging company must draw up a report intended for the shareholders' meeting explaining and justifying the legal and economic aspects of the cross-border merger and explaining the implications of the cross-border merger for members, creditors and employees.

Where the management or administrative organ of the merging Greek company receives, in a timely fashion, an opinion from the representatives of the employees, as provided for under Presidential Decree 240/2006, that opinion shall be appended to the report.

The Management report is filed with the General Commercial Register held in the General Secretariat of Commerce at least one month before the shareholders' meeting is convened.

10. The report must be made available to the members and to the representatives of the employees or, where there are no such representatives, to the employees themselves, not less than one month before the date of the shareholders' meeting.

11. In accordance with Article 76(1) of the Greek Codified Law on public limited liability companies, members of the board of directors of the merging companies can be held liable to the shareholders of these companies or to third parties for any damage resulting from the preparation and conclusion of the merger.

3 Auditor's report

12. In accordance with Article 6(1) of the Greek Law on Cross-border Mergers, an independent auditor's report intended for the partners/shareholders (depending

on the legal form of the company) is drawn up for each merging company. The auditors may be individuals or legal entities.

In accordance with Article 6(2) of the Greek Law on Cross-border Mergers, as an alternative to auditors operating on behalf of each of the merging companies, one or more independent experts, appointed for that purpose at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the company resulting from the cross-border merger or approved by such an authority, may examine the common draft terms of the cross-border merger and draw up a single written report to all the members. In Greece, the appropriate above administrative authority for the appointment of the aforementioned independent auditors is the Department of Sociétés Anonymes and Credit within the General Secretariat of Commerce of the Ministry of Development.

If all the partners/shareholders of each of the companies involved in the cross-border merger have so agreed, neither an examination of the common draft terms of cross-border merger by independent auditors nor an audit report is required (Art. 6(4) Greek Law on Cross-border Mergers).

An auditor's report is also not required in the event of a merger by absorption of a wholly owned subsidiary (Art. 13(a) Greek Law on Cross-border Mergers).

13. According to the Greek Law on Cross-border Mergers and Corporate Law, the auditors' report must include the following:

(i) If, in the opinion of the auditors, the exchange ratio between the shares of the company or companies being absorbed and the shares issued by the company absorbing is fair and reasonable. It should be noted that the auditors do not determine the exchange ratio but simply provide their assessment on the ratio.

(ii) The total value of all the contributing assets and liabilities of the company or companies being absorbed and the change this will have on the capital of the absorbing company, resulting from the merger. According to Greek law, the report must also: include the description of each contribution; make reference to the valuation methods that have been applied; and certify whether the values deriving from the application of these valuation methods correspond to the number and nominal value of the shares that will be issued against the contributions or where the par value is not known, to the book value, taking also into consideration the difference above par which may arise from the issue of the shares.

(iii) The method or methods used for the determination of the proposed exchange ratio between the shares.

(iv) A statement on whether the method or methods followed are appropriate for the specific case or cases, the values resulting from the application of each method and an opinion of the importance given to certain methods for the determination of these values, as well as a description of any difficulties that have arisen during the valuation.

The auditors have the right to request from each merging company all information they consider necessary for the discharge of their duties (Art. 6(3) Greek Law on Cross-border Mergers).

14. The independent auditor's report must be drawn up for each merging company and made available not less than one month before the date of the general meeting.

4 General meeting of shareholders

A Information for shareholders

15. According to an application by analogy of relevant provisions of Greek company law 2190/20, at least one month before the shareholders' meeting convenes in order to decide on the common draft terms of cross-border merger, every shareholder has the right to be informed of the contents of at least the following documents, at the seat of the company:

(i) the management report and the auditor's report;
(ii) the common draft terms of cross-border merger;
(iii) the annual financial statements, including the management reports issued by the Board of Directors, for the last three fiscal years of each merging company; and
(iv) if the draft terms of cross-border merger are dated more than six months after the close of the last fiscal year to which the latest annual accounts relate, an accounting statement (temporary balance sheet) for each merging company dated no earlier than three months prior to the date of the draft terms of cross-border merger.

16. Following a written application by any interested shareholder, the company must deliver or send at no cost full copies or abstracts of the above documents.

B Shareholder approval

17. After taking note of the management and auditors' reports, the general meeting of each of the merging companies shall decide on the approval of the common draft terms of cross-border merger. However, for the absorption of a wholly owned subsidiary by its parent company, shareholder approval is not required at the level of the subsidiary (Art. 13(a) Greek Law on Cross-border Mergers).

18. As concerns Greek companies participating in cross-border mergers, a reinforced quorum and majority is required according to the legal form of the entity, as follows.

For Greek public limited liability companies, the shareholders' meeting requires a quorum and validly meets when two-thirds of the paid up share capital is present or represented at the meeting. If no such quorum is achieved during the first meeting, a quorum of one-half of the paid up share capital is required. If no such quorum is achieved during the second meeting, a quorum of one-third of the paid up share capital is required. Decisions are validly taken by a majority of two-thirds of the votes represented at the shareholders' meeting.

For Greek private limited liability companies, the shareholders' meeting of partners can take a valid decision regarding a cross-border merger if it achieves a majority of at least three-quarters of partners representing at least three-quarters of the capital. It should be noted that the change of nationality requires a unanimous decision of all partners.

For Greek limited partnerships by shares, a unanimous decision of all partners is required.

19. According to an application by analogy of relevant provisions of Greek company laws 2190/20 and 3190/55, the decision of the shareholders' meetings on the merger together with the relevant agreement must be drawn up in the form of a notarial deed, which must be filed with the Ministry of Development and published in the Greek Government Gazette.

20. If there are different classes of shares and if the merger results in a change of their respective rights, the quorum and special majority requirements must be met for each class of shares. If any company participating in the cross-border merger has creditors holding convertible corporate bonds, the decision regarding the merger has to be approved by these creditors as well.

21. The general meeting of a merging company may decide to make its decision subject to express ratification of the arrangements with respect to the participation of employees in the company resulting from the merger (Art. 7(4) Greek Law on Cross-border Mergers).

5 Pre-merger certificate

22. The Greek Administrative authority competent to review the legality of the cross-border merger as regards that part of the procedure which concerns the merging companies subject to Greek law is the Department of Public Limited Liability Companies and Credit within the General Secretariat of Commerce of the Ministry of Development (now called the Ministry of Economy, Competitiveness and Marine).

The aforementioned authority must issue, without delay, to the merging companies subject to Greek law, a certificate attesting to the proper completion of the pre-merger acts and formalities.

23. The above authority may issue the aforementioned certificate even if a compensation procedure is pending for the minority members in connection with the ratio applicable to the exchange of shares, in accordance with Article 8(1)(b)

of the Greek Law on Cross-border Mergers. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the company resulting from the cross-border merger and all its members.

6 Effects of the decision

24. The Greek Administrative authority competent to review the legality and approve the cross-border merger as regards that part of the procedure which concerns the completion of the cross-border merger in Greece and, where appropriate, the formation of a new company resulting from the cross-border merger in Greece, is the Department of Public Limited Liability Companies and Credit within the General Secretariat of Commerce of the Ministry of Development. The above authority ensures in particular that the merging companies have approved the common draft terms of cross-border merger in the same terms and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 14 of the Greek Law on Cross-border Mergers (Art. 10(1) Greek Law on Cross-border Mergers).

25. To that end each merging company that is not subject to Greek law shall submit to the Department of Public Limited Liability Companies and Credit within the General Secretariat of Commerce of the Ministry of Development the pre-merger certificate within six months of its issue together with the common draft terms of cross-border merger approved by the general meeting (Art. 10(2) Greek Law on Cross-border Mergers).

In the event the absorbing company or the company resulting from the cross-border merger has its registered address in Greece, the cross-border merger agreement is executed in the form of a notarial deed, to which a statutory declaration is attached attesting that creditors did not express any objection to the merger or that any objection was resolved (Art. 11(1) Greek Law on Cross-border Mergers).

26. The cross-border merger is completed when the Decision of the Minister of Development approving the merger is recorded in the General Commercial Register maintained within the General Secretariat of Commerce of the Ministry of Development and the relevant announcement is published by the Department of Public Limited Liability Companies and Credit within the General Secretariat of Commerce of the Ministry of Development in the Greek Government Gazette. When the Decision of the Minister of Development approving the merger is recorded in the General Commercial Register, the Department of Public Limited Liability Companies and Credit must notify, without delay, the relevant registries of the Member States in whose jurisdiction the other companies being merged were subject to (Art. 11(2) Greek Law on Cross-border Mergers).

When the registration of the cross-border merger is undertaken by another Member State, the Department of Public Limited Liability Companies and Credit within the General Secretariat of Commerce of the Ministry of Development deletes the Greek company being absorbed from the General Commercial Register upon notification that the decision approving the cross-border merger was registered (Art. 11(3) Greek Law on Cross-border Mergers).

27. From the date the cross-border merger has been registered, it cannot be declared void (Art. 15 Greek Law on Cross-border Mergers).

VI Minority shareholders

28. The members of the Greek company being absorbed, who did not approve the decision for the cross-border merger have the right within one month from the date the shareholders' meeting approved the cross-border merger to do the following:

(i) They have the right to file a petition with the Greek courts asking the Greek company participating in the cross-border merger to repurchase the securities or titles, on the condition that the Greek company is being absorbed or that the new company resulting from the cross-border merger has its registered office in another Member State. In this case, the provisions of Article 49a of Greek Codified Law 2190/1920 regarding Greek public limited liability companies, which provides for the right of the minority to request the repurchase of its shares by the company, apply by analogy. In order to ensure the payment of the repurchase price, the Greek courts may issue injunction or provisional measures (Art. 8(1)(a) Greek Law on Cross-border Mergers).

(ii) They have the right to claim compensation if the ratio applicable to the exchange of their securities or titles in consideration for the securities or titles in the absorbing company has been determined unjustifiably low, in accordance with the provisions of Article 77a of Greek Codified Law 2190/1920 regarding Greek public limited liability companies. In this case, the merger procedure is not postponed. The above compensation procedure is applicable in Greece only if there is a respective procedure according to the laws of the Member States of the other companies participating in the cross-border merger or if the other companies participating in the cross-border merger and which are registered in Member States that do not provide for such procedure explicitly accept in the common draft terms of the cross-border merger that the shareholders of the Greek companies being absorbed have the right to make use of the particular procedure. The decision issued according to the above procedure is binding on the company resulting from the cross-border merger and on all its members (Art. 8(1)(b) Greek Law on Cross-border Mergers).

VII Protection of creditors

29. As concerns the protection of creditors, Article 8(2) of the Greek Law on Cross-border Mergers refers to the provisions of Article 70 of Greek Codified Law 2190/1920 regarding Greek public limited liability companies and Article 54 of Law 3190/1955 regarding limited liability companies.

Regarding Greek public limited liability companies in particular, within a period of one month from the completion of the publicity formalities, the creditors of the companies to be merged, the claims of which were born before the publication and had not become due and payable on the publication date, have the right to ask for sufficient guarantees, if the financial situation of the companies to be merged renders such protection necessary and under the condition that these creditors have not already received such guarantees. Any dispute gives the right to the interested creditors to raise in writing objections against the merger. Following a petition of the company or companies to be merged, the competent court of first instance may permit the merger, despite the objections of the creditor(s), if it is ruled that the financial situation of the companies to be merged or the guarantees that have been received by or offered to these creditors do not justify their objections.

VIII Employee participation

30. The Greek Law on Cross-border Mergers, in Article 14, provides for the participation of employees in the company resulting from the cross-border merger in Greece and sets as a general rule the application of Greek law on employee participation in the event the company resulting from the cross-border merger has its registered office in Greece, providing, however, for exceptions to the extent this is necessary for the maintenance of existing rights of employees.

31. Notwithstanding the above, the rules in force concerning employee participation in Greece do not apply in the following cases:

(i) where at least one of the merging companies has, in the six months before the publication of the draft terms of the cross-border merger, an average number of employees that exceeds 500 and is operating under an employee participation system within the meaning of Article 2 of Greek Presidential Decree 91/2006 (which harmonised the Directive on European Companies), or

(ii) where Greek law does not provide for (a) at least the same level of employee participation as operated in the relevant merging companies, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation, or (b) employees of the establishments of the company resulting from the cross-border merger that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in Greece.

32. In the cases referred to in no. 31 above, the participation of employees in the company resulting from the cross-border merger and their involvement in the definition of such rights is regulated by the relevant provisions of the Regulation on European Companies (EC 2157/2001) and the Directive on European Companies (2001/86/EC), as harmonised by Greek law.

33. According to the Greek Law on Cross-border Mergers:

(i) the relevant organs of the merging companies have the right to choose without any prior negotiation to be directly subject to the standard rules for participation and to abide by those rules from the date of registration; and
(ii) the special negotiating body has the right to decide, by a majority of two-thirds of its members representing at least two-thirds of the employees, including the votes of members representing employees in at least two different Member States, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in Greece.

34. When the company resulting from the cross-border merger operates under an employee participation system, the company is obliged to take measures to ensure that employees' participation rights are protected in the event of subsequent domestic mergers for a period of three years after the cross-border merger has taken effect.

Companies established in Greece and falling under the provisions of the Greek Law on Cross-border Mergers are obliged to notify the number of their employees and the number of their representatives in writing to the Ministry of Labour and Social Protection (Department of Social Inspection) within a period of three months from the completion of the merger.

IX Tax treatment

35. Greek Law 2578/1998, as subsequently amended by Law 3517/2006, brought relevant Greek tax legislation in line with the Merger Tax Directive (2009/133/EC) of 19 October 2009.

36. In accordance with Article 1 and 2 of Greek Law 2578/1998, the relevant tax provisions regarding cross-border mergers of the law apply when the following conditions apply cumulatively:

(i) a cross-border merger takes place, as defined in Greek Law 2578/1998 (Art. 2(a) Merger Tax Directive), whose conceptual term is in line with that in the Greek Law on Cross-border Mergers;

(ii) the merger takes place between companies that have their tax residence in different Member States of the European Union (under the terms of national legislation and double taxation agreements) and are subject to the taxes set out in Article 3(c) of the Merger Tax Directive;

(iii) the merger takes place between companies that have the legal form set out in Annex A of the Greek Law 2578/1998 (see also Annex (g) of the Merger Tax Directive); for companies under Greek law: public limited liability company and private limited liability companies known as 'ανώνυμη εταιρεία' and 'εταιρεία περιορισμένης ευθύνης (Ε.Π.Ε.)' respectively; and

(iv) the merger results in the transfer of assets and liabilities that (a) are situated in Greece, (b) give rise to a permanent establishment of the acquiring company or that are connected to an existing permanent establishment in Greece and (c) contribute to generating income subject to Greek income tax. The term 'permanent establishment' is defined in accordance with Article 100 of the Greek Income Tax Code and the relevant provisions of double taxation agreements.

37. In the event of a cross-border merger as defined above, the capital gain resulting from the absorption of a Greek company or a permanent establishment of a foreign company in Greece by a company from an EU Member State is not subject to Greek income tax at the time of the merger (tax deferral) according to Article 3 of Greek Law 2578/1998. Notwithstanding the above exemption, if the Greek company being absorbed by virtue of a cross-border merger has a permanent establishment (e.g. branch) in another EU Member State, the transfer of the permanent establishment due to the cross-border merger is subject to Greek capital gains tax, in which case a tax credit is given for the capital gains tax that would have been paid in the respective EU Member State where the permanent establishment is situated.

38. The aforementioned income tax deferral ceases to exist and the EU company that absorbed the Greek company or the permanent establishment of a foreign company in Greece is subject to Greek income tax for the capital gain arising from the cross-border merger in the following cases:

(i) the permanent establishment in Greece of the EU company that absorbed the Greek company or the permanent establishment of a foreign company in Greece ceases to exist;

(ii) the capital gain is taken outside or exported out of Greece;

(iii) the capital gain is credited in the accounts of the EU company that absorbed the Greek company or the permanent establishment of a foreign company in Greece; and

(iv) assets acquired by virtue of the cross-border merger are transferred outside Greece by the EU company that absorbed the Greek company or the permanent establishment of a foreign company in Greece.

39. In addition to the aforementioned tax deferral of the capital gains tax resulting from the absorption of a Greek company or a permanent establishment of a foreign company in Greece by a company from an EU Member State, Greek Law 2578/1998 also provides for the following tax treatment.

Tax reserves recorded in the books of the Greek company or the permanent establishment of a foreign company in Greece being absorbed are not subject to tax at the time of the cross-border merger, on the condition that they are transferred and recorded as is in special accounts in the books of the permanent establishment resulting from the cross-border merger.

The permanent establishment in Greece resulting from the cross-border merger can continue to use the tax losses recorded in the books of the Greek company or the permanent establishment of a foreign company in Greece being absorbed, on the condition that this is permissible according to Greek incentive legislation for domestic mergers. According to current legislation, such benefit is not applicable.

The permanent establishment in Greece resulting from the cross-border merger can continue to depreciate the assets acquired from the Greek company or the permanent establishment of a foreign company in Greece being absorbed under the same terms and conditions.

All tax benefits and incentives granted to the Greek company or the permanent establishment of a foreign company in Greece continue to exist in the name of the permanent establishment in Greece resulting from the cross-border merger.

The following acts and transactions are exempt from Greek tax, stamp duty and duties in favour of the Greek State:

(i) the merger agreement;
(ii) the contribution and transfer of assets and liabilities from the companies being absorbed to the permanent establishment resulting from the cross-border merger;
(iii) the decisions of the companies participating in the cross-border merger and any other decision or act required for the completion of the cross-border merger;
(iv) the publication of decisions in the Greek Government Gazette;
(v) the transfer of real estate from the Greek company or the permanent establishment of a foreign company in Greece being absorbed on the condition that the real estate will be used by the permanent establishment resulting from the cross-border merger for at least five years from the merger.

40. Any capital gain arising for the members or shareholders of the companies being absorbed from the issue of titles or securities in the absorbing company in exchange for titles or securities in the companies being absorbed, due to a cross-border merger, is not subject to Greek income tax. This tax exemption is granted under the following conditions:

(i) the member/shareholder acquiring titles or securities in the absorbing company does not confer on such titles or securities a tax value higher than that which the titles or securities he/she exchanged them for had before the cross-border merger;

(ii) a cash payment was not paid to the members/shareholders whose company was absorbed. In the latter case, the cash payment is subject to Greek income tax.

41. If the cross-border merger has as its principal objective or as one of its principal objectives tax evasion or tax avoidance, any tax benefits provided by virtue of Greek law 2578/1998 cease to apply from the date of the merger.