

# Greece

Kelemenis & Co.

Tom Kyriakopoulos



## 1 Relevant Authorities and Legislation

### 1.1 What regulates M&A?

#### Mergers

Mergers are regulated by the following:

- Codified Statute 2190/1920 (arts 68 to 80), as recently amended by Statute 3604/2007, which sets out the rules for domestic mergers.
- Statute 3412/2005 which sets out the rules for cross border EU mergers following the establishment of a European Company (SE) [Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE)].
- Statutes 2166/1993 and 1297/1972 which provide tax incentives for mergers.

#### Public takeovers

Public takeovers are regulated by the following:

- Statute 3461/2006 on public takeover bids [Directive 2004/25/EC].
- Statute 3401/2005 on the prospectus to be published when securities are offered to the public or admitted to trading [Directive 2003/71/EC].
- Statute 3340/2005 on the protection of the capital market from abuse of privileged information and market manipulation [Directive 2003/6/EC].
- Codified Statute 2190/1920 (art. 49a to 49c), as recently amended by Statute 3604/2007, which sets out the rules for acquisition of shares, without prejudice to Statute 3461/2006 on public takeover bids.
- Statute 3371/2005 on the admission of securities to official stock exchange listing and on information to be published on those securities [Directive 2001/34/EC].
- Decisions issued by the Hellenic Capital Market Commission (HCMC), a self-governed regulatory authority operating as a public legal entity.
- The Athens Exchange Rulebook, as in force, which sets out the procedural requirements for the listing of new shares.

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

There are no different rules for different types of companies. They apply in a uniform manner to all takeover bids for obtaining securities of all types of companies whose seat is located in Greece and whose shares, either in their entirety or partly, are listed on an organised securities market in Greece.

### 1.3 Are there special rules for foreign buyers?

There are no special rules for foreign buyers and no restrictions on foreign ownership of shares in Greece.

### 1.4 Are there any special sector-related rules?

In certain regulated sectors, M&A transactions are subject to the prior or subsequent approval of or notification to the relevant Supervising or Regulatory Authority. In particular, in any change of ownership of shares over and above 5% in Greek credit institutions and in any change of ownership of shares in insurance undertakings with respect to thresholds of 10%, 20%, 33% and 50%, the prior approval of, respectively, the Bank of Greece and the Ministry of Development is required. Furthermore, any change that affects control in Greek energy companies holding licences for power generation and supply must be notified to the Minister of Development and the Greek Energy Regulatory Commission. Similar rules also apply for media and telecommunication companies.

### 1.5 What are the principal sources of liability?

Statute 3461/2006 on public takeover bids introduces special provisions regarding the liability of the offeror, the offeror's advisor and the persons that drafted and signed the prospectus for the takeover bid. In particular, these persons are liable vis a vis the holders of the securities of the offeree company for actual damages incurred (not loss of profits) by the latter due to any inaccuracy and inadequacy of the information in the prospectus. The damaged party is liable to prove the extent of the damages but is not required to prove that the offeror, the advisor and the persons that drafted and signed the prospectus showed willful misconduct or negligence (such evidence burdens the persons liable). Statutory limitation on such liability ends three years after the expiration of the time allowed for the acceptance of the bid. Any reservations made by the offeror, the advisor or the persons that drafted and signed the prospectus regarding limitation or disclaimers of liability, are null and void. In addition to the relevant provisions of Statute 3461/2006, the provisions of the Greek civil code also apply as well as the special provisions of Statute 2251/1994 (on the protection of consumers).

Statute 3401/2005 on the prospectus to be published when securities are offered to the public or admitted to trading provides for similar rules. In particular, the publisher, the company requesting the listing of shares, the board of directors, the underwriter and the advisors are liable vis a vis the persons who acquired shares in the last 12 months following the publication of the prospectus for actual damages suffered. Our comments

regarding Statute 3461/2006 apply respectively for Statute 3401/2005.

According to Statute 3340/2005 on the protection of the capital market from abuse of privileged information and market manipulation, persons who possess inside information by virtue of their membership of the administrative, management or supervisory bodies of the issuer, or their holding in the capital of the issuer, or their having access to the information through the exercise of their employment, profession or duties or criminal activities, are prohibited from using such inside information for acquiring or disposing of, or for trying to acquire or dispose of, for their own behalf or for the account of a third party, either directly or indirectly, financial instruments to which that information relates. Furthermore, the Statute also prohibits any person from engaging in market manipulation, as this term is defined in the law according to Directive 2003/6/EC. For persons who illegally use inside information or engage in market manipulation, Statute 3340/2005 provides for (i) administrative sanctions in the form of pecuniary penalties ranging from EUR 10,000 to EUR 2,000,000 (this ceiling may be tripled for second time offenders) and (ii) criminal sanctions in the form of imprisonment between 1 and 5 years (between 5 and 10 years for persons committing such crimes repeatedly). The law does not have special provisions regarding civil liability. Liability from the aforementioned actions is governed by the provisions regarding liability from tort in the Greek civil code. The damaged party must prove the extent of the damages, the wilful misconduct or negligence of the person who illegally used inside information or engaged in market manipulation and the relation between the aforementioned actions and the party's damages.

## 2 Mechanics of Acquisition

### 2.1 What alternative means of acquisition are there?

#### Mergers

Greek law provides for the following type of mergers:

- Merger by absorption whereby the acquiring company absorbs the acquired company.
- Merger by absorption whereby the acquiring and acquired companies are absorbed establishing a new third company.
- Purchase of the acquired company's business (assets and liabilities) by the acquiring company, following the dissolution (without being liquidated) of the acquired company, against cash or other consideration paid by the acquiring company to the shareholders of the acquired company.
- Spin-off of a part or sector of the acquired company's business and absorption of the part of sector by the acquiring company.
- Split of a company into two separate and autonomous companies and absorption of one of the companies by the acquiring company.
- Cross border merger of two companies seated in two different Member States following the establishment of a European Company (SE).

#### Takeovers

Greek law provides for the following type of takeovers:

- Mandatory takeover bid applies in the event a shareholder possesses at least 1/3 of all the votes in the target company, unless one of the following applies: (a) another shareholder possesses a higher percentage of votes; (b) the securities were acquired by virtue of a voluntary public takeover; (c) the shareholder acquired the shares by virtue of a parental donation or inheritance; (d) the securities were acquired following an increase of the company's share capital; and (e) the acquisition of the securities were a result of a merger,

privatisation process or bankruptcy restructuring. In the event of a mandatory takeover bid, the shareholder has the obligation to initiate a public takeover within 20 days from acquiring the above percentage.

- Voluntary takeover bid is a public invitation by any shareholder, irrespective of his/her percentage of votes, for the acquisition of shares in the target company. The offeror is obliged to purchase the total number of shares unless he has declared that he will acquire a specific number of shares, in which case if the shareholders of the target company offer more shares, the offeror must satisfy the offers proportionally.
- Participation in the capital increase of the target company, following restriction or abolition of the pre-emption rights of the existing shareholders.
- Acquisition of a block of shares representing more than 50% of the voting rights of the target company.
- Leveraged buy-out where the target company is taken over, using the target's assets to finance the debt incurred by the acquisition.

### 2.2 What advisers do the parties need?

Takeover bids provide for the use of an advisor by the offeror. The advisor may be any credit institution or an investment service company in Greece or in any other Member State of the EU which is authorised to provide underwriting services. The advisor signs and verifies the accuracy of the content of the prospectus as well as any revised bid, who also provides in writing an opinion on the methods and procedure for safeguarding the obligations undertaken by the offeror as well as the credibility of the offer. The advisor has the same liability as that of the offeror vis a vis the recipients of the public offer.

### 2.3 How long does it take?

The following are the key dates in the offer timetable (days in most cases are working days):

Day 0	The offeror who has decided to initiate a voluntary takeover bid or the person who is obliged to make a takeover bid (i.e. 20 days from acquiring 1/3 of the target company's voting rights) must inform in writing the HCMC and the board of directors of the target company of the former's decision or obligation to initiate a takeover bid. At the same time the offeror must also file a draft of the prospectus with the HCMC and the board of directors of the target company.
Day 1	Public announcement of the takeover bid.
Day 11	Approval of the prospectus by the HCMC (if the consideration includes non-listed securities, the period is extended to 20 days).
Day 14	The prospectus is published and is provided to the public free of charge in hard copy at the premises of the offeror, the advisor and the credit institutions or investment service companies that have been authorised by the offeror. The prospectus is published in electronic form on the offeror and advisor's website (if applicable). Announcement of the bid is published in the Daily Bulletin of the Athens Stock Exchange (ATHEX) at the site of ATHEX and on the site of the offeror concerning access points for receiving the prospectus. Offeror submits the approved prospectus to the target company and the employees of the target company. Commencement of acceptance period (4 - 8 weeks).

Day 24	The board of directors of the target company submits its opinion (containing its views on the bid) together with a report issued by a third party financial advisor to the offeror, the HCMC and its employees.
Day 63	Last day for submission of competitive bids.
Day 65	Last day for submission of revised bids by offeror.
Day 70	End of acceptance period. The acceptance period may be extended for two weeks following a request of the offeror. Such an extension must be approved by the HCMC and made public.
Day 72	Last day for the publication of the outcome of the offer.

\* the above timetable has been calculated on the basis of an 8 week Acceptance Period

### Timetable variations

The following variations may apply to the timetable:

- Revised bid - The bidder may, no later than 5 working days before the end of the acceptance period, improve the terms of the offer. The revised offer is submitted to the HCMC for approval, is notified to the target's board and is made public on the next working day. The HCMC approves the revised offer within 2 working days from submission. The submission of a revised offer does not in itself extend the acceptance period. The target's shareholders who have accepted the initial offer are deemed to accept the revised offer unless they state otherwise.
- Competitive bid - Competitive bids may be submitted no later than 7 working days before the end of the acceptance period. They must be approved by the HCMC within 4 working days from submission. The acceptance period for the initial bid is automatically extended until the end of the acceptance period for the competitive bid. On the next day following the approval by the HCMC of the offer document in relation to the competitive bid, the competitive bidder announces to the public the termination date of the acceptance period for the competitive bid as well as the extension of the acceptance period for the initial bid.

### 2.4 What are the main hurdles?

The main hurdles for execution of the transaction are:

- the approval of the offer by the HCMC;
- the submission of a competitive bid which results in a delay of the overall process;
- all regulatory clearances pertaining to the transaction (approvals required by the Hellenic Competition Committee or other regulatory authorities such as the Bank of Greece, the Ministry of Development, etc.);
- resistance by employees; and
- resistance by other shareholders, especially if other shareholders are the Greek state or Greek funds.

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

In a voluntary takeover bid, there is no minimum level of consideration. The offeror may declare that he will acquire a specific number of shares, in which case if the shareholders of the target company offer more shares, the offeror must satisfy the offers proportionally.

In a mandatory takeover bid, the consideration must be equitable (reasonable and fair) which is deemed to be a price per share not less than:

- the average quote of the securities in the last six months before the date when the offeror was obliged to file a takeover bid; and
- the highest price paid by the offeror or any persons acting in concert with the offeror to acquire the securities, during the last 12 months before the date the offeror was obliged to file a takeover bid.

If the offeror or any person acting on its behalf or in concert with it following the announcement of an offer and before the end of the acceptance period acquired securities which are the subject of the offer at a higher price than the offer price, the bidder must increase the consideration offered to at least that higher price paid.

In the event the offeror declared that he will acquire a specific number of shares, if the shareholders of the target company offer a greater number of such shares, the offeror must satisfy the shareholders proportionally.

Public takeover bids cannot be subject to terms and conditions, other than those related to the issue of administrative or regulatory licences and approvals or the issue of new shares when such are offered as consideration.

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

The offeror may offer consideration in securities, whether listed or not, cash or a combination of both. In a mandatory takeover bid, the offeror must include a cash alternative so that the target company's shareholders have the right to opt for payment in cash instead of securities.

Cash offers require a statement from a credit institution established in Greece or in another EU Member State, confirming that the offeror has access to the necessary funds for the payment of the total amount of the payable consideration.

Securities offers also require a statement by an investment services company, confirming that the offeror owns or has access to the securities offered as consideration.

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

According to the provisions of Statute 3461/2006 on public takeover bids, all holders of securities of the target company of the same class must be equally treated and thus be offered the same consideration and provided with the same information during a takeover bid.

Furthermore, Statute 3371/2005 regulating capital markets and Statute 3340/2005 on the protection of the capital market from abuse of privileged information and market manipulation, provide that information provided to the public regarding a company listed in other countries must be equal.

### 2.8 Are there any limits on agreeing terms with employees?

The law does not provide for any restrictions or limitations regarding the ability of the offeror agreeing terms with the employees. It should be pointed out that if the target company arranges any deals with the employees, such measures may be deemed prohibitive as defense measures.

### 2.9 What documentation is needed?

According to the provision of Statute 3461/2006 on public takeover bids, the takeover documentation required for a transaction to be

completed is the following:

**The Takeover Bid** - summarises the terms of the takeover bid. The bid must include (i) the details of the target company, the offeror and the advisor; (ii) the securities that are being targeted; (iii) the total number of securities that the offeror assumes or is obliged to acquire; (iv) the takeover price; (v) the minimum number of securities; (vi) the number of securities held by the offeror; and (vii) the offeror's intent to acquire shares until the date of acceptance.

**The Prospectus** - must at least contain the following information:

- The terms of the public offer.
- The name and registered office of the target.
- The name and registered office of the bidder or, in case the bidder is a legal entity, its name, type and registered office.
- Details of the bidder's financial adviser including its name, registered office and address.
- Details of the persons responsible for drafting the offer document, including their names and relation to the bidder, as well as a declaration by them that the prospectus is complete, that the data contained in it are real and that there are no omissions that might distort its content or the essence of the offer.
- The securities or the class of securities for which the offer is made.
- The maximum percentage of securities the bidder commits or is under an obligation to acquire, their percentage in relation to the share capital of the target and in relation to the total amount of securities of the same class.
- The minimum percentage of securities which, in a voluntary offer, must be accepted for the offer to come into force.
- The securities or the class of securities of the target that the bidder or persons acting on its behalf or in concert with the bidder already hold, directly or indirectly.
- Any intention of the bidder to acquire additional securities of the target, apart from those that will be offered, during the period commencing when the offer is made public and ending when the offer closes for acceptance.
- The consideration offered for each security or for each class of securities, the particulars of payment and, in a mandatory offer, the method employed in determining the consideration.
- In case securities are offered as consideration, full details of the securities, including their rights and their issuer.
- Every pre-condition that the HCMC has set for the offer.
- Starting date and end date of the acceptance period.
- The actions the target's shareholders must take to accept the offer, the procedure they must follow in order to fulfill the obligations undertaken in the acceptance or to revoke the acceptance, and the procedure for the transfer of the securities and receipt of payment.
- The bidder's business plans for the continuation of the activities of the target and the offeror, as well as in relation to the employees of the target.
- Any special agreements concerning the offer or the exercise of the rights attached to the securities of the target that the bidder or persons acting on its behalf or in concert with the bidder already hold, directly or indirectly.
- Any other condition of the offer
- Details (including the type of transaction, number of securities, price and date) of any trades effected by the bidder or persons acting on its behalf or in concert with the bidder on the target's securities within 12 months preceding the announcement of the offer.
- Information about the financing of the offer.
- The identity of persons acting on behalf of the bidder or in concert with it or with the target and, in case of legal entities,

their type, name, registered office and their relation with the offeror and the target.

- Detailed report of the share structure and the shareholdings of the bidder in affiliated or subsidiary companies.
- The law governing the legal relation between the bidder and the target's shareholders, as well as the competent courts.
- The compensation offered for the rights removed as a result of the breakthrough rule (that is, any restrictions on the transfer of securities and/or on voting rights set out in the target's articles of association or in contractual agreements entered into after Statute 3461/2006 came into force, either between the target and holders of the securities or among holders of the securities, having no effect on the bidder) with a detailed reference to the particulars of payment and the method used for determining it.
- The opinion of the bidder's financial adviser on the methods and procedure for safeguarding the obligations undertaken by the bidder towards the target's shareholders as well as the credibility of the offer.
- When the consideration involves securities listed on a regulated market, the offer document must state the place where: (a) the most recent prospectus for those securities was made available; (b) the financial information published by the issuer of the securities according to the publication requirements was made available; and (c) the place where important announcements are made by the issuer.
- When the consideration involves securities not listed on a regulated market, the offer document must contain information on those securities equivalent to the information included in an offer document published when securities are offered to the public or admitted to trading, which enables the target's shareholders to form an opinion regarding the assets, the financial status, the results and the business prospects of the issuer.

**The Opinion of the Target's board** - should include: (i) the number of shares held or controlled, directly or indirectly by the directors of the target; (ii) the board's intended actions with regard to the takeover bid; (iii) any agreements between the target's board and the offeror; and (iv) the management's justified views in relation to the takeover bid, referring specifically to the consequences of a successful takeover bid to the target's interests and those of its employees, as well as its views regarding the offeror's strategic plans for the target company.

**Statements by credit institutions or investment services companies**

- confirming that the offeror has access to the necessary funds for the payment of the total amount of the payable consideration (in the event of cash offers) or owns or has access to the securities offered as consideration in the event of securities offers.

**The declaration of acceptance** - whereby the shareholders of the target company declare that they accept the offer. In particular, the acceptance of the takeover bid is effected pursuant to a written declaration by the shareholders which is filed with credit institutions or investment services companies. Alternatively, the takeover bid may be accepted through the Central Depository of Securities by virtue of a written declaration.

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## 2.10 Are there any special accounting procedures?

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There are no special accounting procedures for takeover bids. However, all companies listed on the ATHEX must maintain their books according to International Financial Reporting Standards.

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## 2.11 What are the key costs?

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The key costs of such transactions are:



- advisor's fees;
- costs related to the availability of the necessary funds or securities;
- publication and publicity costs; and
- transaction costs associated with the ATHEX and the Central Depository of Securities.

#### 2.12 What consents are needed?

The consents needed for the materialisation of the transaction are:

- approval by the HCMC of the takeover bid announcement;
- approval by the HCMC of the Prospectus;
- approval by the Hellenic Competition Commission if required by existing anti-trust laws; and
- approval by appropriate supervisory or regulatory authorities.

#### 2.13 What levels of approval or acceptance are needed?

In order for a merger to be approved, the general meetings of shareholders of both companies must decide with a special quorum and majority of shareholders representing 2/3 of the paid-up share capital. If the above requirements are not met, the general meeting is reconvened within 20 days to decide with a quorum of shareholders representing 1/2 of the paid-up share capital and a majority of the 2/3 of the shareholders present or represented at the meeting. If these requirements are not met either, the general meeting is convened again within 20 days, to decide with a quorum of shareholders representing 1/3 of the paid-up share capital and a majority of 2/3 of the shareholders present or represented at the meeting.

#### 2.14 When is the consideration settled?

The settlement of the consideration is made through banks, investment service companies or through the Central Depository of Securities.

### 3 Friendly or Hostile

#### 3.1 Is there a choice?

Hostile bids, though not expressly regulated by Statute 3461/2006, are allowed provided the general statutory provisions regulating takeovers are observed. Hostile takeover bids are not uncommon, (for example, the offer from Cereal Company of Northern Greece to the shareholders of X. Katselis Sons in 2007).

#### 3.2 How relevant is the target board?

The target board is heavily involved in the procedures of a takeover bid, as it has to draft and publish its opinion on the offer stating its views on the takeover bid. The target board may also try to rebut a takeover by applying various defensive measures against it. Furthermore, it is under an obligation to inform the employees about the offer.

#### 3.3 Does the choice affect process?

The choice affects the process, given that depending on the level of resistance applied by the Board of Directors will effectively dictate the success, cost and time required for acquiring the target company by the offeror.

### 4 Information

#### 4.1 What information is available to a buyer?

Persons wishing to acquire information on potential target companies may acquire information from the following sources:

- annual financial statements published in the Official Government Gazette and filed with the prefecture; listed companies must also publish half-yearly and annual financial statements;
- the articles of association of the target company which includes information about its object, share capital, classes of shares and voting rights;
- full details about the members of the board of a company including information about its officers (president, vice-president and managing director) and the persons who have the right to sign for and on behalf of the company are published in the Official Government Gazette and filed with the prefecture;
- annual reports of the board which are published at least 20 days before a general meeting;
- reports filed with supervisory and regulatory authorities (if the company is supervised or regulated);
- reports filed with the ATHEX and the HCMC;
- market and sector reports issued by private companies;
- reports, data and statements published on the target's website;
- previous reports issued by the target company in the event of listings, placements etc.

It should be noted some of the above sources may require a legal interest to acquire information.

#### 4.2 Is negotiation confidential?

The general rule is that all market information must be disclosed to the general public and that market players should avoid disclosing any information that may be in breach of Statute 3340/2005 on the protection of the capital market from abuse of privileged information and market manipulation [Directive 2003/6/EC].

When negotiations are in progress or when decisions are subject to approvals by appropriate bodies, the disclosure of information which is not final may lead to future implications if the decisions are not finally taken.

On the basis of the above, information which is not mature for disclosure should remain confidential and participants should provide information only to those people necessary for the negotiations.

#### 4.3 What will become public?

The information that will become public is the information that is required to be published for the takeover bid as per question 2.9 above.

#### 4.4 What if the information is wrong or changes?

Following approval by the HCMC, the voluntary public takeover bid may be withdrawn if there are unforeseen changes in the circumstances, which are not attributable to the offeror and make the public takeover bid financially burdensome.

Moreover, if the information is wrong or changes, the offeror may modify its bid. However, such modification may only improve the offer and not make it worse.

## 5 Stakebuilding

### 5.1 Can shares be bought outside the offer process?

Yes, securities can be acquired outside the takeover bid process, at the same, higher or lower price than that offered by the offeror.

### 5.2 What are the disclosure triggers?

From the date of announcement until the end of the acceptance period, the offeror, individuals and legal entities possessing at least 5% of the voting rights of the target company and the members of the board or the members of the company whose securities are offered as consideration, are obliged to disclose to the HCMC and publish in the Daily Price Bulletin any securities (of the target company or that company whose securities are offered as consideration) acquired either through the stock exchange or outside thereof, as well as the acquisition price. The same obligation applies to any intermediaries acting in their name but on behalf of the above persons, or any persons controlled by them or acting in concert with them.

The same obligation applies to any individual or legal entity that acquires at least half a percent (0.5%) of the voting rights in the target company, or in the offeror, or in the company issuing securities.

### 5.3 What are the limitations?

The offeror can purchase shares outside the acquisition process at a price higher than that of the takeover bid. In this case, the offeror will be obliged to increase respectively the takeover bid price.

## 6 Deal Protection

### 6.1 Are break fees available?

Greek law does not provide for special rules regarding break fees in the course of a takeover bid and there does not seem to be relevant experience in Greece with such mechanisms. Nevertheless, the incorporation break fee payment could not be excluded altogether. However, the following should be considered:

- within the scope of Statute 3340/2005 on the protection of the capital market from abuse of privileged information and market manipulation [Directive 2003/6/EC], the break fee clause should be disclosed in the prospectus and in all other relevant documentation issued in the course of the takeover bid.
- the break fee amount should be reasonable so as not to force the target company's shareholders into accepting the takeover bid or restricting competition between the potential bidders, to the detriment of the shareholders.

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

Any agreement by which the target company assumes not to shop the company or its assets is not valid.

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

Without prejudice to identifying alternative offers, the board of directors of the target company cannot undertake, from the date the takeover bid was announced to the board until the results of the

takeover bid are published, any action that is outside the scope of the usual operations of the company and which may lead to the failure of the public takeover bid, without the prior approval of the General Meeting of Shareholders. The General Meeting of the Shareholders is competent, however, to decide a capital increase or the disposal of assets. Such actions may be subject to HCMC control.

### 6.4 What commitments are available to tie up a deal?

The opinion of the board of directors of the target may facilitate the success of a takeover bid.

## 7 Bidder Protection

### 7.1 What deal conditions are permitted?

Public takeover bids cannot be subject to terms and conditions other than those related to the issue of administrative or regulatory licences and approvals or the issue of new shares when such are offered as consideration.

In a voluntary takeover bid, the offeror may set a minimum number of shares that should be offered by the shareholders in order for him to assume the obligation to purchase the shares or limit the number of shares he is obliged to purchase. In the latter case, if the shareholders of the target company offer more shares than the maximum number the offeror intended to purchase, the offeror is required only to satisfy the offers proportionally.

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

During the acceptance period, the board of directors of the target company cannot undertake any action that is outside the scope of the usual operations of the company, other than seeking alternative bids, without the prior approval of the General Meeting of Shareholders. In this light, the offeror can monitor the board of directors' compliance of such obligation.

As noted above, if there is a subsequent material change in the target company, which has rendered the takeover financially burdensome for the offeror, the latter can withdraw its bid, following approval by HCMC.

### 7.3 When does control pass to the bidder?

The offeror acquires control of the target when it acquires a majority of the votes of the target (over 50%). Control over the target company could be acquired even with a lower percentage, if the shares are widely spread in the market.

### 7.4 How can the bidder get 100% control?

Statute 3461/2006 contains "squeeze out" provisions. In particular, the offeror, who, following the submission of the takeover bid, possesses securities representing at least 90% of the total number of votes of the target company, has the right to claim that all the remaining securities of the target company be transferred to it. This right must be exercised within three (3) months from the date the takeover bid acceptance period elapsed, on condition that the prospectus provided for such right. The consideration for the acquisition of the target's securities must be in the same form and must be at least equal to the consideration paid in the course of the

takeover bid. In order for the offeror to exercise such right, it must file a request (including the amount and form of consideration) with the HCMC which is also notified to the target company.

Cash offers require a statement from a credit institution established in Greece or in another EU Member State, confirming that the offeror has access to the necessary funds for the payment of the total amount of the payable consideration.

Once the HCMC verifies that the above apply, it issues a decision as to the manner the acquisition of the remaining securities will take place.

After the payment of the consideration, the Central Depository of Securities registers the offeror as the new holder of the securities.

## 8 Target Defences

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

The board of directors is not required to disclose any unofficial discussions or negotiations with third parties until such decisions are mature, otherwise the board of directors may be held liable for market manipulation if immature information is disclosed and this has an impact on the market.

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

Following the filing of a takeover bid, the board of directors of the target company can seek alternative bids.

The target company may choose, following a shareholders' decision taken not earlier than 18 months prior to the day of announcement of the takeover bid, not to comply with the board of director's obligation to acquire prior approval from the shareholders for the adoption or implementation of measures against takeovers, if the offeror does not respect such obligations either. Said decision must be announced to the HCMC.

### 8.3 Is it a fair fight?

A level playing field between a preferred bidder and a hostile bidder is achieved as follows:

- (i) the board of directors of the target company must always act in the interests of the target and its employees; and
- (ii) both the preferred and the hostile bidder have the same obligations with respect to disclosure of information.

## 9 Other Useful Facts

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

In addition to receiving approvals from the HCMC, the Hellenic Competition Commission (if antitrust rules apply) and the appropriate supervisory and regulatory authorities (if the target company is in a regulated market), the major influences are the following:

- (i) the existence of competitive bidders;
- (ii) the shareholding structure of the target, i.e. whether the Greek state or Greek public funds hold significant percentages;
- (iii) spread of shares in the market;
- (iv) the publicity (positive or negative) surrounding the takeover bid; and
- (v) the reaction of the takeover bid by the employee unions in the target company (if they exist).

### 9.2 What happens if it fails?

If the offeror fails to acquire control in a target company it can do either of the following:

- (i) launch a new takeover bid;
- (ii) exit from the target company (if possible); or
- (iii) negotiate for the increase of its existing shareholding.

## 10 Updates

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

Following a quite disappointing year in 2005, during which it hardly reached €3.1 billion and fell by nearly 25% compared to 2004, M&A activity in Greece tripled and rose to €9.6 billion in 2006. Even though still far behind countries such as the UK, Spain and France, the rise in Greek M&A activity has continued in 2007. Official figures for the first half of 2007 show that the total transactional value has reached €5.5 billion and is set to take the year's total beyond the volume of 2006. Arguably, this rising activity owes much to the overall stability and growth of the Greek capital markets over the past two years and to the solid performance of the Greek economy that keeps growing at a rate well above the average of the Euro zone.

M&A activity has been steadily driven by the banking and telecom sectors. Prominent recent deals have included the acquisitions of Turkey's Finansbank by the National Bank of Greece, of Emporiki Bank by Credit Agricole of France, and of Greece's 3rd and 4th largest mobile companies, TIM Hellas and Q-Telecom, by the Weather Investments Fund controlled by Egyptian businessman Naguib Sawiris. The recent €5.2 billion share capital increase of the Marfin Investment Group, now controlled by Dubai Investment, is expected to give an impetus to various acquisitions in Greece and abroad.

Despite that M&A activity looks like being on the right track, there is still much to be done to make it more diverse and less dependent on privatisations or on the transactions of a small circle of players. Sectors such as energy, health, tourism, food and shipping are expected to become more active, increase overall volume and add to a much-needed diversity. All in all, the period to the end of 2008 will be quite crucial in showing whether the rise in Greek M&A activity will continue and whether new industries will seriously come into play.



### Tom Kyriakopoulos

21 Kolonaki Square  
10673 Athens  
Greece

*Tel:* +30 210 3612800

*Fax:* +30 210 3612820

*Email:* [tk@kelemenis.com](mailto:tk@kelemenis.com)

*URL:* [www.kelemenis.com](http://www.kelemenis.com)

Tom Kyriakopoulos is a partner at Kelemenis & Co. A Greek-Canadian born in Montreal, Tom is a graduate of the law school of the University of Athens and has pursued postgraduate studies at the University of Nottingham, where he obtained an MBA, and at the Athens University of Economics and Business, where he concentrated on tax. He has previously worked at IKRP Rokas & Partners, at Lykourezos Law Offices and at KPMG. Besides his strong background in tax and corporate work, Tom has an in-depth knowledge of the transition economies of Southeast Europe in which he has spent a good part of his working life (e.g. Romania, Bosnia, FYR Macedonia) on several large-scale projects as counsel both to foreign investors and to the EU Commission on legal approximation exercises. His latest publications include the Greece chapter (with Dr. Andreas Bagias) on Project Finance in the Getting the Deal Through series published by the International Bar Association and the Global Competition Review; (with Dr. Andreas Bagias) the chapter "Greece: The Current State of the Law" in the Euromoney Project Finance Yearbook 2007/2008; and "The latest legislative overhaul of the Greek taxation system" in the Tax Directors Handbook 2008 published by the Legal 500. Tom is fluent in English and French.

## Kelemenis & Co.

Attorneys at Law

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