

Greece



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MARKET AND REGULATION

1. Please give a brief overview of the public M&A market in your jurisdiction. (Has it been active? What were the big deals over the past year?)

The M&A market has been quite active over the past year, especially in relation to takeover bids, both voluntary and mandatory. These were made under the provisions of the new law, Statute 3461/2006, which implements Directive 2004/25/EC on takeover bids. Some of the deals include:

- The mandatory public offer from Cereals Company of Northern Greece to the shareholders of X Katselis Sons.
- The voluntary public offer from Info-Quest to the shareholders of Unisystems Information Systems.
- The mandatory public offer from Cosmoholding Cyprus Limited to the shareholders of Germanos. Following acceptance of the offer, Cosmoholding Cyprus Limited exercised its squeeze-out right in early March 2007.
- The voluntary public offer from Alpha Bank to the shareholders of Alpha Leasing. Following acceptance of the offer, Alpha Bank exercised its squeeze-out right in early March 2007.
- The mandatory public offer from Michaniki to acquire Balkan Export.
- The voluntary public offer from Mr A Liberis to the shareholders of Liberis Publications.
- The mandatory public offer from Tramountana Holdings to the shareholders of Notos com Holdings.
- The voluntary public offer from Laiki Cypriot Bank to the shareholders of Marfin Financial Group.
- The voluntary public offer from Laiki Cypriot Bank to the shareholders of Egnatia Bank.
- The voluntary public offer from Unilever Hellas to the shareholders of Elais – Unilever.
- The mandatory public offer from Credit Agricole to the shareholders of Phoenix Metrolife Emporiki. Following acceptance of the offer, Credit Agricole exercised its squeeze-out right, and Phoenix Metrolife Emporiki was eventually de-listed.

- The public offer from GCI Food Enterprises Limited to the shareholders of Nikas.
- The mandatory public offer from Mitilineos to the shareholders of Delta Project.
- The voluntary public offer from Mr Petros Kyriakidis to the shareholders of Evik.
- The public offer from Cyprus Bank to the shareholders of Emporiki Bank, a competing offer to that of Credit Agricole (*see below*).
- The voluntary public offer from Credit Agricole to the shareholders of Emporiki Bank, which was subsequently revised after the competing offer from Cyprus Bank.
- The mandatory public offer from Nestlé Hellas to the shareholders of Delta Ice-Cream Industry. Following acceptance of the offer, Nestlé Hellas exercised its squeeze-out right, and Delta Ice-Cream Industry was eventually de-listed.
- The mandatory public offer from Mr Lavrentios Lavrentiadis to the shareholders of Veterin.

2. What are the main means of obtaining control of a public company? (For example, public offer, legal merger, scheme of arrangement and so on.)

Control of a public company can be obtained by one of the following means:

- By an agreement with shareholders holding the majority of shares in a company.
- Through a public offer (takeover bid) whereby a natural person or a legal entity makes an offer addressed to the shareholders of a listed company to acquire part or all of its shares.
- By a merger, which can be effected in two different ways (*Codified Statute 2190/1920 on Sociétés Anonymes*):
 - one company can absorb the other; or
 - by the formation of a new company following the dissolution (but not winding up) of the merging companies.

3. Are hostile bids allowed? If so, are they common? If they are not common, why not?

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 Cereals Company of Northern Greece to the shareholders of X Katselis Sons in 2007).

4. How are public takeovers and mergers regulated and by whom?

Public takeovers

Public takeovers are regulated by Statute 3461/2006. Article 32 of Statute 3461/2006 repealed decision no. 2/258/5.12.2002 of the Hellenic Capital Market Commission (HCMC) (*see box, The regulatory authority*), which regulated takeover bids before the enactment of the statute.

Mergers

Mergers are regulated by the following:

- Codified Statute 2190/1920 sets out the rules for a merger.
- Statute 3401/2005, which implemented Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, provides for the publication of a prospectus for placing and listing new shares. The prospectus contains information enabling investors to assess the potential investment.
- Statutes 2166/1993 and 1297/1972 provide tax incentives for mergers.
- The Athens Exchange Rulebook, as in force, sets out the procedural requirements for the listing of new shares.

Public takeovers and mergers are regulated by the HCMC, a self-governed regulatory authority operating as a public legal entity.

PRE-BID

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Recommended bid

In a recommended bid the bidder has usually negotiated the terms of the bid and reached an agreement with the board of directors (board) or the controlling shareholders of the target company. The bidder can, therefore, by virtue of an agreement, which will include confidentiality clauses, obtain information about the target company which is not publicly available. In case the bidder

has, in the course of negotiations, obtained inside information, it must comply with the provisions of Statute 3340/2005, which implemented Directive 2003/6/EC on insider dealing and market manipulation (market abuse).

Hostile bid

In the case of a hostile bid, the bidder can only have access to information which is publicly available.

Public domain

Particulars of listed companies are filed with the Ministry of Development, Directorate of Sociétés Anonymes, and published in the *Government Gazette*. In addition they must be notified to the HCMC. The following information is available to the public:

- The articles of association of a 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.
- Listed companies must publish annual financial statements which have been approved by the board (*Presidential Decree 360/1985*). For financial years ending after 31 December 2004, these financial statements must be drafted in accordance with the International Financial Reporting Standards. Listed companies must also publish half-yearly and annual financial statements.
- Any published prospectus.
- Annual reports of the board which are published at least 20 days before a general meeting.
- Details of major holdings, that is when persons acquire or dispose of holdings of more than 5% of the voting rights.
- Announcements or filings made by every listed company to the Athens Stock Exchange (ATHEX) disclosing information such as significant acquisitions and disposals which may significantly affect the fluctuation of the price of shares, or replies to enquiries of the supervising authorities.

6. Are there any rules as to maintaining secrecy until the bid is made?

A person who has decided to make a public offer under article 6 of Statute 3461/2006 or is under an obligation to make a bid under article 7 of Statute 3461/2006 must first notify the HCMC and the board of the target company before any public announcement. There are no other rules to maintain secrecy.

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

As most Greek public companies are controlled by a relatively small number of people, it is usual for a bidder to obtain a memorandum of understanding from key shareholders to sell their shares before launching a bid. In addition, it is also common to have a transfer of the shares of the controlling shareholders to the bidder before the offer, which may make the offer mandatory under Statute 3461/2006.

There are generally no restrictions on the nature or the terms of such agreements. When the bidder publishes the offer document, it is under a duty to disclose the terms of agreements entered into with key shareholders as well as the number and classes of shares of the target company held by the bidder directly or indirectly or by persons acting on its behalf or in concert with it. In addition, the board of the target company must draft and publish its opinion on the bid. The opinion must contain information as to agreements between the board of the target company or its members and the bidder.

8. If the bidder decides to build a stake in the target before announcing the bid, what disclosure requirements, restrictions or timetables apply? Are there any circumstances in which shareholdings of associates could be aggregated for these purposes?

No specific pre-bid disclosure requirements, restrictions or timetables apply if the bidder decides to build a stake in the target before announcing the bid, apart from the general duty to disclose any change (acquisition or transfer) of holdings carrying voting rights and the duty to state any stake in the offer document when the bid is announced. However, the bidder must take into consideration that by building a stake in the target it might be under an obligation to make a mandatory offer or increase the minimum offered price (*paragraph 4, article 9, Statute 3461/2006*).

Notification requirements

Every person who acquires or disposes of a stake in a company resulting in its voting rights reaching, exceeding or falling below the thresholds of 5%, 10%, 20%, 33.3%, 50% and 66.6%, must notify the company and the HCMC the next working day following the change of his shareholding (*Presidential Decree 51/1992 implementing Directive 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of*).

In addition, if a shareholder holds more than 10% of the voting rights in a company, he must notify the company and the HCMC for every alteration in his voting rights which equals or exceeds 1.5% during the first 12 months after the listing of the company. This percentage rises to 3% in subsequent years. Each member of the board of directors and each executive of the company holding shares are under the same duty irrespective of the percentage of their holding in the company.

Calculating voting rights

In order to establish whether a person is under a duty to notify the company and the HCMC, the following rights held by that person are considered voting rights:

- Voting rights held by other persons in their names but on behalf of that person.
- Voting rights held by an undertaking controlled by that person.
- Voting rights held by a third party with whom that person has concluded a written agreement obliging the third party to adopt a common policy with regard to the management of the company.
- Voting rights held by a third party by virtue of a written agreement with that person or with one of the undertakings controlled by that person providing for a temporary transfer of the voting rights in question for consideration.
- Voting rights attached to shares for which that person has the right of use.
- Voting rights which that person or any of the persons mentioned above may acquire at his own option by virtue of an express agreement. In such a case, the notification takes place on the date of the agreement.
- Voting rights attached to the shares which have been deposited in that person's name and which that person may exercise at his discretion as long as no particular instructions of the holders exist.

A controlled undertaking is an undertaking in which a person:

- Holds the majority of the voting rights.
- Has the right to appoint or remove the majority of the members of the management, administrative and supervisory body and is, at the same time, a shareholder or member of that undertaking.
- Is a shareholder or member of the undertaking and controls alone, by virtue of an agreement with other shareholders or members of this undertaking, the majority of the voting rights.

For the purposes mentioned above, a parent company's rights in relation to voting, appointment and removal include the rights of every other controlled undertaking and the rights of every person acting in his name but on behalf of the parent company or any other controlled undertaking.

Mandatory offer

Any person who in any way, directly or indirectly, either alone or following an understanding with other persons acting on its behalf or in concert with that person, acquires shares in a listed company and who as a result holds more than 33.3% of the total voting rights in that company, must make a mandatory offer to acquire all the shares in that company (*article 7, Statute 3461/2006*). Likewise, any person who already holds more than 33.3% with-

out, however, exceeding 50% of the total voting rights in a listed company and who within 12 months, directly or indirectly, either alone or following an understanding with other persons acting on its behalf or in concert with that person, acquires stock in that company which represents more than 3% of the voting rights in that company, must make a mandatory offer. However, there is no such obligation if the offeror (bidder) has already made a mandatory offer.

If the bidder has had access to inside information it is restricted from purchasing shares in the market (*Statute 3340/2005*).

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

In the case of a recommended bid and before the bidder makes an offer it is common for the bidder to negotiate informally the terms of the offer with the directors and controlling shareholders of the target. Formal agreements between the bidder and the target are not common.

A person who has decided to make an offer must, before proceeding to any public announcement, notify the HCMC and the target's board of its decision to make the offer. Following this notification and until the result of the offer is made public or the offer is withdrawn, the target's board cannot proceed to any action which may result in the frustration of the offer without the prior authorisation of the general meeting, apart from seeking alternative offers (*article 14, Statute 3461/2006*).

There is no specific prohibition preventing the board from entering into an agreement not to solicit or recommend other offers, although the board must act in the interests of the shareholders (*article 5(c), Statute 3461/2006*). The board has also to state in its opinion, which is made public (*see Question 14*), any agreement between the board or its members and the bidder.

10. Is it common on a recommended bid for the target to agree a break fee if the bid is not successful? If so, please explain the circumstances in which the fee is likely to be payable and any restrictions on the size of the payment.

There are no specific provisions regulating break fees nor are they common. It may be that such an agreement is held void under the provisions of Codified Statute 2190/1920 (*article 23a*) if it is regarded as a loan, a credit or a guarantee to a founder, or as an assistance in obtaining shares in the target.

The bidder may withdraw a voluntary offer in the following cases (*article 20, Statute 3461/2006*):

- If a competing offer is submitted. The withdrawal must be announced to the HCMC within three working days following HCMC's approval of the offer document in relation to the competing offer.

- If an unforeseen change of circumstances occurs which is outside the bidder's control and which makes the continuation of the offer in force onerous.

The withdrawal of the offer is published by the bidder:

- On the ATHEX website.
- In the Daily Official List of ATHEX.
- On the bidder's website provided it has already been published on the ATHEX website.

11. Is committed funding required before announcing an offer?

If the consideration offered is cash, the bidder must submit a confirmation from a credit institution established in Greece or in another member state of the EU, that the bidder can pay in cash the total amount of the consideration (*article 9, Statute 3461/2006*).

If securities are offered as consideration the bidder has to submit a confirmation issued by an investment firm or a credit institution established in Greece, or in another member state of the EU, that the bidder holds the securities offered as consideration or that it has taken every appropriate measure to ensure payment of the consideration.

ANNOUNCING AND MAKING THE OFFER

12. Please explain how (and when) the bid is made public (highlighting any relevant regulatory requirements) and set out brief details of the offer timetable. (Consider both recommended and hostile bids.) Is the timetable altered if there is a competing bid?

The procedure for a bid to be made public is the same regardless of whether the bid is recommended or hostile.

Notification

The bidder must notify the HCMC and the target's board immediately after the decision to make an offer is taken and submit a first draft of the offer document both to the HCMC and the target's board. In a mandatory offer the above notification must take place within 20 days from the date the bidder exceeded the threshold of 33.3% of the total voting rights (*see Questions 8 and 16*). On the next working day the bidder must announce the offer to the public and its announcement must include the following information:

- The name and registered office of the target company.
- The name and address of the bidder, or if the bidder is a legal entity its name, type and registered office.
- The name and address of the bidder's financial adviser.
- The shares or the classes of shares to which the offer relates.

- The maximum number of shares that the bidder commits or is under an obligation to acquire, and the percentage of those shares in relation to both the:
 - total share capital of the target; and
 - total amount of shares of the same class.
- The consideration offered for each share.
- In a voluntary offer, the minimum number of shares which has to be accepted as a condition for the offer to be binding.
- The number of shares of the target already held by the bidder, either directly or indirectly.
- The bidder's intention, if any, to acquire additional shares in the target apart from those to be acquired through the offer during the period commencing when the offer is made public and ending when the offer closes for acceptance.

Offer timetable (voluntary and mandatory offers)

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

- **Day 0.** In a voluntary offer this is the decision of the offeror (bidder) to make the offer. In a mandatory offer this is the expiration of the 20-day period from acquiring control of the offeree (target company).

Notification of the offer and submission of a first draft offer document to the HCMC and to the board of directors of the offeree.
- **Day 1.** Public announcement of the offer.
- **Day 11.** Latest date for the approval of the offer document by the HCMC. If the consideration includes non-listed securities and the offer document contains information about them, the period of approval is extended to 20 days.
- **Day 14.** Latest date for the publication of the approved offer document and its submission to the offeree. Start of acceptance period. The acceptance period must have a minimum duration of four weeks and a maximum of eight weeks.
- **Day 24.** Latest date for the publication of the opinion of the board of directors of the offeree.
- **Day 70 (8 weeks from the start of the acceptance period).** 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.** Latest date for the publication of the outcome of the offer.

Timetable variations

The following variations may apply to the timetable:

- **Revised offer.** The bidder may, no later than five 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 two 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.
- **Competing offer.** Competing offers may be submitted no later than seven working days before the end of the acceptance period. They must be approved by the HCMC within four working days from submission. The acceptance period for the initial offer is automatically extended until the end of the acceptance period for the competing offer. On the next day following the approval by the HCMC of the offer document in relation to the competing offer, the competing bidder announces to the public the termination date of the acceptance period for the competing offer as well as the extension of the acceptance period for the initial offer.

Publications

All announcements concerning the offer are notified to the HCMC and published:

- On the ATHEX website.
- In the Daily Official List of ATHEX.
- On the website of the person making the announcement provided that it has already been published on the ATHEX website.

The offer document must also be made available to the public in printed form at the registered office and at the branches of the offeror, its financial adviser and the credit institutions or the investment firms the offeror has authorised, and on the financial adviser's website.

13. What conditions are usually attached to a takeover offer (in particular, is there a regulatory requirement that a certain percentage of the target's shares must be offered/bid)? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

Voluntary offers

A voluntary offer is not subject to any regulatory requirement that a certain percentage of the target's shares must be offered. The bidder may set a maximum number of shares that it commits to acquire; otherwise, it must acquire all the shares that will be offered. The bidder may also set a minimum number of shares that must be offered so that the offer comes into force.

Mandatory offers

In a mandatory offer the bidder must accept all the shares offered. In addition, the bidder does not have the option to withdraw the offer even if competing offers are made.

Pre-conditions

Neither voluntary nor mandatory offers can be subject to the satisfaction of pre-conditions apart from those published in the prospectus which relate to the granting of the necessary administrative licences and approvals, or to the issue of new securities offered as consideration.

14. What documents do the target's shareholders receive on a recommended and hostile bid? (Please briefly describe their purpose and main terms, and which party has responsibility for each document.)

Offer announcement

See *Question 12* for its content.

Offer document

The target's shareholders receive the offer document which 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, the 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 fulfil 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 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 (*see Question 13*).
- 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 provided for 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 in 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:
 - the most recent prospectus for those securities was made available;
 - the financial information published by the issuer of the securities according to the publication requirements was made available;
 - 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.

Opinion of the target's board of directors

The target's board drafts and publishes its reasoned opinion on the offer. A detailed report of a financial adviser is attached to the board's opinion, and must:

- Specify the number of the target's securities owned or controlled, directly or indirectly, by the members of the target's board and its executives.
- Report the actions already taken or intended to be taken by the board in relation to the offer.
- Mention the agreements, if any, between the board or its members and the bidder.
- State the opinion of the board in relation to the offer and the reasons on which it is based, with a special reference to its repercussions, if accepted, to the interests of the company, including the employees' interests, as well as to the bidder's strategic plans for the target as stated in the offer document.

The opinion of the board is submitted to the HCMC and to the bidder within ten days following the publication of the offer document. In case a revised offer is submitted, the above deadline is one day from the approval of the revised offer by the HCMC. The board's opinion is also notified to the employees' representatives within the ten-day period mentioned above. If the board receives a separate opinion from the employees' representatives regarding the impact of the offer on employment, it attaches this opinion to its own.

15. Are there any requirements for a target's board to inform or consult its employees about the offer?

There are three occasions where the target's board is under a duty to inform its employees about a public offer:

- Without any undue delay on being informed of the offer, the board must notify the employees' representatives or, if there are no representatives, the employees about the submission of an offer.
- Following the publication of the offer document, the board must forward it to the employees' representatives or, if there are no representatives, to the employees.
- The board notifies the employees about its opinion (see *Question 14*).

16. Is there a requirement to make a mandatory offer? If so, when does it arise?

Mandatory offer

Any person who acquires listed securities by any means (directly or indirectly, by itself or following an understanding with other persons acting on its behalf or in concert with that person) which causes the percentage of voting rights held by that person (directly or indirectly, by itself or following an understanding with other persons acting on its behalf or in concert with that person) to exceed one-third of the target's total voting rights, must submit a mandatory offer for the total number of securities of the target within 20 days of such acquisition and pay an equitable price (see *Question 18*) (*article 7, Statute 3461/2006*).

In addition, any person already holding more than one-third without exceeding one-half of the target's total voting rights and who within 12 months (directly or indirectly, by itself or following an understanding with other persons acting on its behalf or in concert with that person) acquires securities which represent more than 3% of the target's total voting rights is under the same obligation.

Voting rights acquired or controlled by the bidder or persons acting on its behalf or in concert with the bidder by virtue of an agreement, pledge, use, custody or trusteeship of securities are regarded as voting rights of the bidder if the bidder is able to exercise such rights at its discretion.

Exceptions

The obligation to submit a mandatory offer does not apply in the following cases:

- A third party holds a higher percentage of voting rights.
- The securities were acquired through a voluntary public offer submitted according to the provisions of Statute 3461/2006 to all the holders of securities for the total number of securities held by them.

- The securities are acquired as a gift from a parent or by inheritance.
- If a person has acquired a percentage of voting rights which does not exceed the threshold of one-third by more than 3% of the total voting rights and who undertakes in writing:
 - to dispose of a sufficient number of securities in order to go below the threshold within six months from acquisition; and
 - not to exercise the voting rights attached to the securities during that period.

The undertaking of such an obligation is made public and is notified to the HCMC.

- The securities have been acquired following the exercise of pre-emption rights in a share capital increase in relation to the rights of that person as an existing shareholder, provided the exercise of the pre-emption rights did not involve the waiver of pre-emption rights of other shareholders. Likewise, in case the existing shareholder declares, when exercising his pre-emption rights, that he wishes to acquire additional securities which have not been allotted, as long as the board allots the securities in proportion to the pre-emption rights of all existing shareholders.
- If the acquisition of securities is a result of a merger between connected companies (*as defined in paragraph 5(a) of article 42e and paragraph 1 of article 96 of Codified Statute 2190/1920*).
- If a privatisation procedure of the target is in process.
- If the acquisition of securities is part of a financial restructuring according to articles 44 et seq. of Statute 1892/1990 (a voluntary arrangement between the target and its creditors).

CONSIDERATION

17. What form of consideration is commonly offered on a public takeover?

The bidder may offer consideration in securities, whether listed or not, cash or a combination of both (*article 9, Statute 3461/2006*). In a mandatory offer, the bidder must include a cash alternative so that the target's shareholders have the right to opt for payment in cash instead of securities.

18. Are there any regulations that provide for a minimum level of consideration? If so, please give details.

If the bidder 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.

Apart from the above requirement, in a voluntary offer there is no minimum level of consideration (this may change under pending legislative reform, *see Question 29*).

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

- The average market price for the securities in the six months before the date when the bidder became bound to submit a mandatory offer.
- The higher price which the bidder or any persons acting on its behalf or in concert with the bidder paid to acquire the securities, during the 12 months before the date the bidder became bound to submit a mandatory offer.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders? If so, please give details.

No additional restrictions or requirements are stipulated by Statute 3461/2006 regarding foreign bidders.

POST-BID

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders? If so, please give details.

Statute 3461/2006 provides for squeeze-out and sell-out rights.

Squeeze-out right

Where a bidder, following an offer, holds securities representing at least 90% of the total voting rights of the target, it may demand that all the remaining securities be transferred to it. The squeeze-out right may be exercised within three months from the end of the acceptance period, provided the offer document contained a relevant clause. The consideration for the acquisition of the remaining securities must be in the same form and at least equal to the consideration of the offer. In any case, the remaining shareholders may opt for payment in cash in which case paragraph 4 of article 9 of Statute 3461/2006 applies (*see Question 18*).

Sell-out right

In similar circumstances as above, a bidder is under an obligation, for a period of three months following the announcement of the outcome of a public offer, to acquire through the stock exchange or over-the-counter all the securities offered to it from the remaining shareholders. The consideration must be in cash and equal to the offer price, unless the remaining shareholders opt for the securities offered as consideration under the bid. The HCMC has issued a specific decision on this matter (*Decision No. 1/409/29.12.2006*).

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

There are no restrictions on launching a new offer.

22. What action is required to de-list a company?

The decision to de-list a company is taken by the HCMC after an application of the company which follows a resolution of the general meeting of its members taken by a majority of 95% of the voting rights of every class of shares for which de-listing is requested. The HCMC may impose special conditions on the company and/or its shareholders.

TARGET'S RESPONSE

23. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?

Pre-bid

There are no specific defensive measures stipulated by the law. Any decision of the target's board, taken before the offer is notified to it, which may result in the frustration of the offer and which has not yet been implemented either in whole or in part, has to be approved or confirmed by the general meeting of the target.

Post-bid

For a period starting when the board is notified about the offer and ending when the outcome of the offer is announced, the board cannot, without the prior authorisation of the general meeting, proceed with any action that is outside the usual course of the company's business and may result in the frustration of the offer.

The general meeting of the target may decide not to comply with the above restrictions if the offeror is a company which does not comply with the same restrictions or is a company connected to a company which does not comply with them.

TAX

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in your jurisdiction? Can payment of transfer duties be avoided?

Non-listed shares

A transfer of non-listed shares is subject to 5% tax payable on the transfer price or on the value of the transaction as determined by the tax authorities, whichever is higher.

Under a recent statutory reform, if the transferor of non-listed shares is a legal entity, any capital gains resulting from the share

THE REGULATORY AUTHORITY

Hellenic Capital Market Commission (HCMC)

Head. Alexios Pylavios (Chairman)

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Main area of responsibility. The HCMC is responsible for:

- Supervising the capital market.
- Promoting efficient and fair markets.
- Maintaining consumer confidence.
- Reducing financial crime by preventing and repressing capital market related offences.

Contact for queries. See telephone number above.

Obtaining information. See website above.

sale is subject to corporation tax at the applicable rate. The 5% tax payable on transfer is taken into account when calculating corporate tax.

Listed shares

Listed shares following a successful takeover bid are transferred over-the-counter by an agreement between the offeror and the target's shareholders. No transfer tax is imposed on the transaction. The only fees payable by each party to the agreement are the Central Securities Depository fees at 0.08% of the value of the transaction.

OTHER REGULATORY RESTRICTIONS

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable (for example, do the approvals delay the bid process, at what point in the timetable are they sought and so on)?

Where Regulation (EC) No. 139/2004 on the control of concentrations between undertakings does not apply, the prior notification to and the approval of the Hellenic Competition Commission is required for any concentration of undertakings when both:

- The combined aggregate worldwide turnover of all the undertakings concerned is at least EUR150 million (about US\$198 million).
- The aggregate turnover of each of at least two of the undertakings concerned in the Greek market is at least EUR15 million (about US\$20 million).

Such a concentration can be prohibited by the Hellenic Competition Commission if it is believed to result in a substantial restriction of competition. However, the completion of the offer is not hindered, provided the bidder both:

- Has notified the Hellenic Competition Commission of the offer.
- Abstains from exercising the voting rights attached to the securities for which the offer is made or exercises them so as to preserve the full value of its investment under a special authorisation granted by the Hellenic Competition Commission.

Where the companies involved are regulated by special authorities (for example, in the case of banks, other financial institutions and insurance companies) the approval of those authorities must also be obtained.

26. Are there restrictions on foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

There are no restrictions on foreign ownership of shares.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies? If so, please give details.

There are no restrictions on repatriation of profits or exchange control rules for foreign companies.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

Restrictions

There are no restrictions imposed on persons who deal in the securities of the parties to a bid, apart from the obligation of the bidder to increase the price offered if it, or persons acting in concert with it, acquire securities of the target at a price higher than the one offered (*see Question 18*).

Disclosure requirements

Following the announcement of the offer and until the offer closes for acceptance:

- The following must disclose to the HCMC and publish in the Daily Official List of ATHEX every acquisition of securities of the target or of the company whose securities are offered as consideration, including the acquisition price, on the next day following the date of acquisition, whether effected through the stock exchange or over-the-counter:

- the bidder;
- any natural person or legal entity holding at least 5% of the voting rights of the target;
- any member of the target's board;
- any member of the company whose securities are offered as consideration.

The same duty applies to natural persons or legal entities who act in their names but on behalf of the above mentioned persons, to companies they control and to any other person acting in concert with them.

- Any natural person or legal entity who acquires at least 0.5% of the voting rights in the target or in the bidder, or in the company whose securities are offered as consideration, must disclose this acquisition to the HCMC and publish it in the Daily Official List of ATHEX on the next day following the acquisition. This duty applies to any of the above persons or to other natural persons or legal entities acting on their behalf, and to companies controlled by the above persons or by any other person acting in concert with the above persons. The acquisition price and the voting rights that the above persons already hold must also be disclosed.

REFORM

29. Please summarise any proposals for the reform of takeover regulation in your jurisdiction.

A draft bill submitted to the Greek Parliament on 23 March 2007 has proposed certain amendments to Statute 3461/2006. In particular, it:

- Implements Directive 2004/109/EC on transparency requirements for securities admitted to trading on a regulated market and amending Directive 2001/34/EC.
- Provides that in a voluntary offer addressed to all the holders of securities for the total of their holdings, consideration must be equitable (reasonable and just) pursuant to paragraph 4 of article 9 of Statute 3461/2006 (*see Question 18*).
- Provides for sell-out rights where the securities are subject to third party rights (that is, attachment, pledge and right of use). It is proposed that the securities are transferred to the bidder free from any third party right, which is exercised over the consideration offered.
- Provides for the situation when a listed company is absorbed by a non-listed entity. It is proposed that no merger will take place which may result in the above situation unless a mandatory offer is first made. However, the offer need not be made if the decision for the merger is taken by a majority of 95% of the share capital.

PRACTICE AREAS

CORPORATE & COMMERCIAL

- Mergers and Acquisitions
- Restructurings and Spin-offs
- Management buy-outs and buy-ins
- Joint Ventures
- Public Private Partnerships
- Venture Capital
- Competition and Antitrust

ENERGY & NATURAL RESOURCES

- Regulatory Compliance
- Acquisition and Disposals
- Energy Infrastructure
- Public Private Partnerships
- Energy Finance
- Energy Disputes

FINANCE & CAPITAL MARKET

- Regulatory Compliance
- Mergers and Acquisitions
- Asset Finance
- Acquisition Finance
- Project Finance
- Syndicated Loans
- Insolvency
- IPOs

LITIGATION & DISPUTE RESOLUTION

- Contractual Disputes
- Corporate Litigation
- Shareholder Litigation
- Insurance Litigation
- Employment Litigation
- Arbitration

EMPLOYMENT

- Employment Terms
- Stock Option Plans
- Remuneration
- Service Contracts
- Collective Redundancies
- Termination of Employment Contracts
- Health and Safety at Work

REAL ESTATE

- Acquisitions & Disposals
- Property Finance
- Tax-driven Investments

SHIPPING: WET & DRY

- Ship Finance
- Charterparties
- Cargo Claims
- Salvages
- Marine Insurance
- Mega Yachts

TAX

- Tax Planning
- Mergers and Acquisitions
- Corporate Reorganisations
- Financial Taxation

Founded by Dr. Yannis Kelemenis, an Oxford graduate and Rhodes Scholar, Kelemenis & Co. is an Athens-based law firm providing quality legal services in the key corporate and commercial areas. The firm advises a varied client base that includes corporations, governments, large institutions and high-net-worth individuals. The firm draws on a team of lawyers with excellent academic qualifications from world-class universities (e.g. Oxford, Cambridge, Harvard).

Kelemenis & Co. has built a strong reputation for acting on complex, high volume cross-border transactions for a range of corporate and financial institution clients. The firm's M&A track record spreads across an array of sectors including energy, infrastructure, hotels, leisure, real estate, retail and technology.

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