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Greece: Law & Practice
Yannis Kelemenis and Katerina Filakouri
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Greece: Trends & Developments
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GREECE

Law and Practice

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1. Legal System and Regulatory Framework

1.1 Legal System

Greece is a civil law country, which means that case law is not deemed a source of law. The Greek Constitution stands at the core of the country's legal system and sets out the guidelines of statutory legislation. Along with the legislative and executive authorities, the judiciary is one of the three powers of governance in Greece. Greek courts are divided into administrative, civil and criminal. One principal difference with common law countries is the distinction between public and private law. Commercial law is a branch of private law, which has been heavily influenced by the French Napoleonic Commercial Code of 1807. Over the years, German law has also had an influence on Greek commercial legislation. Broadly speaking, Greek commercial law is divided into two key categories (general commercial law and corporate law) and several sub-categories (eg, industrial property, intellectual property, competition law).

1.2 Regulatory Framework for FDI

Although Greece's FDI score has been lower compared to the average for OECD countries, there has been some improvement since 2021. According to the latest available data from the Bank of Greece, the (net) inflows of foreign direct investment (FDI) in Greece in 2021 exceeded EUR5.3 billion compared to EUR2.8 billion in 2020. These are record levels (the largest net FDI inflows since 2002), which confirm the upward trajectory of the Greek economy and the successful effort made in recent years to attract foreign investment to Greece. In general, there are no particular provisions or restrictions on FDI. To the extent there are, they are no different from those applicable in the EU (ie, EU Regulation 2019/452; the "FDI Screening Regulation").

2. Recent Developments and Market Trends

2.1 Recent Developments and Market Trends

The country has become much more friendly to foreign investments since its coming out of the fiscal debt crisis and the election of a centre-right government in 2019. The modernisation of the economy and of the public sector (primarily through an impressive digitisation of public service operations) has helped to open up the Greek market to foreign investors and, as all forecasts indicate, the economy looks set to continue its growth through 2023.

3. Mergers and Acquisitions

3.1 Transaction Structures

Transactions in Greece can either be structured as asset deals (buyout of the target's assets-acquisition in rem) or shares deals (buyout of the target's shares), or through a corporate transformation (eg, merger, division). Share deals are the type of transaction structure most often used in Greece, either for majority or minority investments. Acquisition of public companies is similar to that of private companies, although there are some differences in the disclosure requirements and the protection of minority rights.

3.2 Regulation of Domestic M&A Transactions

Transactions meeting the jurisdictional thresholds prescribed by the Greek Competition Act must be notified to the Hellenic Competition Commission (HCC, or the "Commission") and a standstill obligation is imposed on the parties involved not to complete the transaction until it has been cleared by the HCC. Depending on the

type of M&A transaction, the following regulatory bodies may need to be involved in the process:

- the Bank of Greece for financial and credit institutions and insurance companies;
- the Hellenic Capital Market Commission (HCMC) for listed entities, investment firms and any other entities supervised by it;
- the Regulatory Authority for Energy; and
- the Hellenic Gaming Commission.

As regards recent legislative developments, the Greek Competition Act was amended in January 2022. The amendments introduced significant changes, including amendments to applicable merger control rules. For instance, the HCC has been empowered to impose remedies in Phase I clearance decisions, whilst in the past it could only impose remedies in the context of Phase II clearance decisions, which often resulted in transactions being upgraded and scrutinised in Phase II investigations.

Following the adoption of the FDI Screening Regulation, there has been a tightening of regulatory regimes regarding foreign investments in many EU countries. Greece, however, does not have a formal FDI screening mechanism in place as yet.

4. Corporate Governance and Disclosure/Reporting

4.1 Corporate Governance Framework

Corporate governance is regulated in Greece by both corporate law and capital market regulation. The current institutional legal framework is set out in Law 4548/2018 and Law 4706/2020. The vast majority of corporate governance requirements apply to public companies. The basic corporate governance rules are:

- the obligation to adopt and apply of a Corporate Governance Council Code (most of the Greek listed companies have adopted the Hellenic Corporate Governance Council Code);
- the adoption of a Remuneration Policy and a Suitability Policy outlining the criteria for the appointment, replacement and the appraisal of the Board of Directors' (BoD) members;
- the requirement of the participation of non-executive members in the BoD (the minimum number of non-executive members is three and, in any case, not less than one third of the total number of the members; either the chairperson or the vice-president of the BoD should be a non-executive member);
- the operation of an Audit Committee (type, composition, term, number and responsibilities of the committee's members), Remuneration Committee (includes recommendations to the BoD regarding the remuneration policy) and a Nomination Committee for BoD members;
- the diversity rule according to which 25% of BoD members should come from the gender that is underrepresented on the Board;
- the establishment of an Internal Audit Unit (IAU) which oversees the responsibilities, tasks and appointment of the staff;
- the adoption of an Internal Regulation, approved by the BoD, which should incorporate a minimum description of internal audit, risk management and regulatory compliance functions;
- the publication of the company's articles of association on its website;
- the establishment of a Corporate Communications Unit; and
- the establishment of a Shareholder Service Unit which offers enhanced protection to the shareholders and equal access to information and services.

There is a variety of legal forms under which a business may be established and operate:

- a company limited by shares (ie, a *société anonyme* or SA) regulated by Law 4548/2018;
- a private company (*Idiotiki Kefaleouhiki Eteria* or IKE) regulated by Law 4072/2012, which also has limited liability;
- a company with limited liability (ie, *Eteria Perioriśmenis Efthynis* or EPE) regulated by Law 3190/1955, which also has limited liability;
- a general partnership (*Omotythmos Eteria* or OE) regulated by Law 4072/2012;
- limited partnership (*Eterorythmos Etairia* or EE) regulated by Law 4072/2012; and
- Greek branches of foreign companies.

Only companies limited by shares (SA) can be listed on the regulated market of the Athens Exchange. The choice of one of these legal forms depends on many factors, such as the type of business to be implemented, the amount of capital to be invested, the type of liability on part of partners/shareholders and the disclosure rules. A company limited by shares (SA) is the form traditionally adopted by larger companies.

4.2 Relationship Between Companies and Minority Investors

The rights of minority investors depend on the legal form of the company. With regard to minority rights of companies limited by shares (SA), which can also be public companies, Greek law provides that the following rules are applicable on the request of shareholders representing 5% of the paid-up share capital.

- The BoD is obligated to convene an extraordinary general meeting to be held within 45 days from the date the request was served to the chairperson.
- The BoD is obliged to include additional items on the daily agenda of the general meeting, provided the relevant request is received by the BoD at least 15 days prior to the general meeting. For companies with shares listed in a regulated market, the request to include additional items in the daily agenda is accompanied by a justification or a draft decision for approval by the general meeting, and the revised daily agenda is published in a similar manner as the previous daily agenda 13 days before the date of the general meeting and simultaneously made available to shareholder on the website of the company together with the justification or the draft decision that has been submitted by shareholder.
- The chairman of the meeting is obliged to postpone decision-making of the ordinary (annual) or extraordinary general meeting, once only, for all or certain items, by setting the date for reconvening the session as requested in the shareholders' request, which cannot be more than 20 days from the date of postponement.
- The resolution of any matter included on the agenda for the general assembly must be adopted by roll call.
- An extraordinary review of the company by the court.

Other minority rights under Greek law provide that on the request of shareholders representing one tenth of the company's share capital, the BoD is obliged to provide information about the course of corporate affairs and the assets of the company to the general meeting.

Shareholders representing one fifth of the company's share capital have the right to request a financial review of the company if it is believed that, due to the course of the company or based on specific indications, the BoD or administra-

tion of the company has not exercised sound and prudent management.

At the request of any shareholder:

- the BoD is obliged to provide the general meeting with the information that has been specifically requested concerning company affairs, in so far as they are relevant to the items on the agenda, provided the relevant request is made at least five full days before the general meeting; and
- the BoD is obliged within 20 days to inform the shareholder about the capital of the company, the share classes that have been issued and the number of shares of each class, especially preference shares, the rights that each class provides, as well as any blocked shares, both their number as well as the restrictions imposed.

In the case of private companies other than the SA, minority protection rights apply, such as the right of shareholders/partners holding 10% of the voting rights of the company to approve the plan for speeding up and completing the liquidation or the right to remove the administrator.

4.3 Disclosure and Reporting Obligations

There are no disclosure and reporting obligations peculiar to a foreign investor or any procedural requirements different from those applicable to domestic investors. There are, of course, UBO reporting requirements and KYC processes that need to be observed, but they are no different from what is expected of domestic investors. As a rule, Greek requirements are no different from those applicable in the EU and Greek legislation has no provisions that deviate from those contained in EU legislation and regulations.

Pursuant to Law 4569/2018 and Law 4548/2018 disclosure is mandatory:

- at the request of the issuers (meaning the issuers of securities in a regulated market) to identify the information of their shareholders who will keep their securities in an omnibus account in the DSS system of ATHEXCSD, whenever they wish to do so and for the purpose of participation in a general meeting; and at the request of the supervisory authorities.

It should also be noted that failure to identify the shareholders of listed companies by the relevant record date results in the deprivation of the right of participation and vote in a general meeting. Lack of identification or belated identification does not impact the validity of the resolution of the general meeting.

Disclosure is applicable in relation to Law 3556/2007, amended by Article 2 of Law 4374/2016, applicable to securities admitted to trading in an organised market, whereby notification must be made by both the registered owner and the beneficial owner of the voting rights to the HCMC and to the issuing company in special cases.

Under Article 24, Paragraph 2 (b) of Law 3461/2006 on Takeover bids, any natural or legal person acquiring at least 0.5% of the voting rights of either (i) the Offeree Company (being the company that is the subject of a Takeover Bid), (ii) the Bidder Company or (iii) any other company whose shares are offered as consideration in a takeover bid, is obliged to report any such acquisition to the HCMC and to publicise it to the ATHEX Daily List, along with the following data:

- the volume of such voting rights acquired (the exact percentage);
- the acquisition's price on each acquisition day;
- any voting rights of such company already held by it.

The above disclosure must be made by the beneficial owner no later than on the day following any such acquisition;the obligation also applies for any natural or legal person acquiring such percentage through any other person acting on its behalf, or through any other person acting in coordination with it or through a company controlled by such person as per provisions of Article 3 of Law 3556/2007, as amended by Law 4374/2016 (that is, such person holds the majority of voting rights on such company or has the right to appoint or revoke the majority of the members of such company's board of directors, management or supervision and is at the same time such company's shareholder, or is shareholder and sole controller of voting rights, under any contractual agreement with the other shareholders of such company).

Under Article 5 of the Short Selling Regulation (EU No 236/2012) and with regard to shares admitted to trading on ATHEX a natural or legal person holding a net short position reaching or falling below the threshold of 0.2% of the share capital triggers a notification requirement. Under Article 6, a public disclosure requirement is applicable to a net short position reaching or falling below the threshold of 0.5% of the share capital.

Under Article 7 of the Short Selling Regulation and with regard to Greek government debt securities, a natural or legal person who has a net short position reaching or falling below the threshold of 0.1%.

A notification or disclosure under the above articles should set out the details of the identity of the natural or legal person, the size of the relevant position, the issuer and the date on which the relevant position was created, changed or ceased to be held.

The notification or disclosure must be made no later than at 15:30 CET+1 on the following trading day.

5. Capital Markets

5.1 Capital Markets

The last couple of years have been critical, as the country appears to be gradually returning to normality and attracting international bond markets by raising funds at historically low costs. On the other hand, however, these years have been marked by the powerful effects of the COVID-19 pandemic and the Russian invasion to Ukraine, increasing volatility.

The HCMC set out three priorities at national level, namely:

- the reform of the institutional framework;
- the strengthening of prudential supervision; and
- the use of new technologies.

Two institutional interventions on the market for alternative investment funds were also made by the HCMC; in particular, Law 4706/2020 introduced a new type of alternative investment fund to be used as a vehicle for investment. An attempt has been made to remove tax disincentives so that alternative investment funds can, finally, be established in the country, even if the manager chooses to set up the funds in other EU countries. These interventions enable man-

agers to establish themselves in Greece with the ultimate objective of enlarging the Greek capital market.

Possible ways of financing one's business in Greece are:

- bank financing;
- floating on the stock exchange;
- public subsidy which revolves around three institutional pillars;
- the Investment Incentives Law;
- the National Strategic Reference Framework establishes the broad priorities for structural funds programmes in Greece; and
- PPP.

5.2 Securities Regulation

The Securities Market is divided into various categories in which the instruments traded thereon are classified according to their special characteristics. It is operated by the Athens Exchange S.A. (ATHEX or X.A. in Greek), and the Electronic Secondary Securities Market (HDAT or Η.Δ.Α.Τ. in Greek), operated by the Bank of Greece.

Various types of transferrable securities are currently listed on the Securities Market, namely:

- shares;
- rights attached to shares;
- bonds;
- Greek certificates (ΕΛ.ΠΙΣ., in Greek);
- certificates representing transferrable securities;
- units of exchange traded funds (ETFs); and
- structured financial products (SFPs).

Transactions on securities listed and traded on the Greek capital markets can be performed either on exchange or over the counter. Securities listed and traded on the markets operated by the ATHEX are registered in book entry form with the electronic system operated by the Hellenic Central Securities Depositary S.A. (the HCSD), a subsidiary of the ATHEX. Transactions performed on such markets are cleared by the ATHEXClear, a subsidiary of the ATHEX. Securities listed on the HDAT are registered in book entry form with the System for Monitoring Transactions in Book-Entry Securities operated by the Bank of Greece (the "BOGS System").

There are no other licensed central securities depositaries and clearing houses operating in Greece. However, a new regime will apply after the amendment of the relevant Greek capital market law rules on central securities depositaries and securities settlement in accordance with Regulation 909/2014/EC on improving securities settlement in the European Union and on central securities depositories, following the entry into force of Greek Law 4569/2018 on central securities depositories. One of the major changes is the introduction of omnibus securities accounts in the HCSD's register. The new regime does not apply to the BOGS System or the Bank of Greece, as its administrator.

The HCMC is the licensing and supervisory authority for all regulated markets and MTF operating in Greece, the HCSD and the ATHEXClear, as well as for the imposition of any sanctions in case of infringement of the Greek capital market law rules.

5.3 Investment Funds

Fund management is governed by two main sets of rules, depending on the nature of the collective investment undertakings (funds) that the fund manager purports to manage:

- the implementing regime of the EU Undertakings for Collective Investments in Transferable

Securities Directive 2009/65/EC (UCITS IV), as amended by Directive 2014/91/EU (UCITS V); and
- the Alternative Investment Fund Managers Directive 2011/61/EC (AIFMD).

The Greek UCITS IV implementing regime is reflected in Law 4099/2012, as amended, and the HCMC Decisions Nos 15/633/20.12.2012, 16/633/20.12.2012, 17/633/20.12.2012 and 1/756/18.5.2016, as well as Circular No 55 of the HCMC. It regulates the management of funds that qualify as UCITS under the UCITS IV and V Directives and their managers. UCITS include two basic types of collective investment undertakings: (i) mutual funds and (ii) variable capital investment companies.

The Greek AIFMD implementing regime, consisting of Law 4209/2013, as amended, regulates the management of funds that qualify as alternative investment funds (AIFs) under the AIFMD. Certain types of locally regulated collective investment undertakings fall under the definition of an AIF, namely:

- closed-ended venture capitals regulated under Law 2992/2002 (AKESs);
- portfolio investment companies regulated under Law 3371/2005 (AEEXs);
- real property management companies regulated under Law 2778/1999 (AEEAPs); and
- AIFs that may be established as closed or open-ended mutual funds regulated under Articles 37 to 56 of Law 4706/2020.

The HCMC is the supervisory authority for both types of funds and their managers, as well as the marketing funds.

The local UCITS, AIFMD and MiFID (Markets in Financial Instruments Directive) regimes do not deviate from the respective EU Directives.

The authorisation process depends on the type of the fund.

For the establishment of a UCITS fund (mutual fund or variable capital investment company), the prior authorisation of the HCMC must be obtained (Article 4, paragraph 4, Law 4099/2012). This requires filing the following documents, in Greek, with the HCMC:

- the fund's regulation or constitutional documents signed by the management company and the custodian;
- a statement of the credit institution about the acceptance of its appointment as custodian; and
- a detailed list of the fund's assets, the total of which must be at least EUR300,000.

The fund is granted a licence provided that the HCMC has approved the above documents after having ascertained that they are compliant with the provisions of Law 4099/2012.

Pursuant to Article 41 of Law 4706/2020, the establishment of an AIF requires the prior approval of the HCMC, which requires the filing of the following documents:

- the AIF's regulation signed by the administrator and the depositary;
- personal details of the natural persons responsible for the management of the AIF;
- a written statement of the AIFM regarding the acceptance of the management of the AIF;
- a written statement of a credit institution or investment firm regarding the deposit of the AIF's assets; and

- a declaration on the payment of the value of the initial assets of the AIF, which shall be at least EUR1 million.

No licensing or authorisation procedure is provided for AKESs; however, these entities must comply with the provisions of Law 2992/2002.

An HCMC licence must be obtained before operating an AEEX. The procedure involves filing a set of documents with the HCMC proving that:

- the AEEX has the necessary technical and financial resources;
- the AEEX's directors have the necessary professional experience, skills and reliability (the criteria are also stipulated in HCMC Decision No 4/452/1.11.2007);
- the AEEX's shareholders are also suitable for holding a shareholding in the AEEX;
- a credit institution authorised in Greece has accepted its appointment as custodian for holding the assets of the AEEX; and
- the AEEX has fully paid the initial share capital.

The HCMC must reply to the application by granting a licence or rejecting the application within three months of its filing. Within six months of obtaining an authorisation, AEEXs are obliged to have achieved the listing of their shares on a regulated market operating in Greece. Otherwise, the authorisation is revoked by the HCMC.

An HCMC licence must be obtained before establishing an AEEAP. This requires the prior granting of an authorisation to the fund management company and the approval of the appointment of the custodian, as well as the funds' regulation. To obtain a licence, the AEEAP must file an application to the HCMC, accompanied by documentation proving that:

- the said requirements (authorisation of fund management company, etc) have been fulfilled;
- the managers or directors and the custodian of the fund have the necessary experience in the area of real estate investments; and
- the regulation of the fund includes sufficient provisions for the protection of the interests of its unitholders.

Furthermore, the AEEAP must submit a detailed list of its assets (which must have a minimum value of EUR10 million, pursuant to Article 5, paragraph 2 (a), Law 2778/1999) and a detailed analysis of its investment plan. There are also certain requirements for the managers, which depend on whether each manager qualifies as a UCITS manager or an AIFM.

Any acquisition of a shareholding in a UCITS manager that results in a shareholder reaching, exceeding or falling below 20%, 33.3% or 50% of its share capital is subject to the prior approval of the HCMC. To this end, the respective shareholder must notify the HCMC in advance of the purported share transfer.

6. Antitrust/Competition

6.1 Applicable Regulator and Process Overview

Cross-border mergers of capital companies between member states are governed by Law 3777/2009 issued in compliance with Directive 2005/56/EC. Merger control provisions are set out in Law 3959/2011 on the protection of free competition, as amended ("Greek Competition Act") (Articles 5 to 10, Greek Competition Act). The HCC (and the EETT for the electronic communications and postal services sectors, respectively) is the national authority responsible

for the examination of merger notifications, the assessment of transactions and the adoption of decisions approving or prohibiting notified transactions. The assessment of merger notifications is carried out by the HCC's Directorate General for Competition (DGC) (or the Directorate of the Hellenic Telecommunications and Post Commission (EETT)).

Generally, there are no restrictions on foreign ownership and investment, except for restrictions on land purchases in border regions and on certain islands due to national security and national defence considerations. However, these restrictions may be lifted. Mergers involving financial entities such as banks, insurance companies, credit institutions and investment service companies must be approved by the Bank of Greece.

The European Commission has authority under the FDI Screening Regulation to support the member states in the screening of FDI on the grounds of security and public order, but its role is only advisory.

If certain thresholds are met, mergers are subject to control under Law 3959/2011 on the protection of free competition.

Preliminary Investigation

After filing the notification, the case is handled by a rapporteur of the HCC. The rapporteur starts a preliminary investigation by requesting additional information and by contacting third parties. A decision is issued within one month of notification.

Further Investigation

After the investigation is complete, the rapporteur submits a reasoned recommendation to the HCC, which is also notified to the parties. Then, a hearing is set to take place. Within 90 days from the referral for further investigation the HCC must issue a decision either clearing the concentration or prohibiting the concentration.

If it does not do this, the concentration is deemed cleared.

Own-Initiative Investigation

The Commission may investigate, at its own initiative, whether a concentration subject to notification has been duly notified to it or, in relation to completed concentrations subject to pre-merger control, whether clearance has been obtained before the concentration's implementation. In the event of a breach of the Competition Law, the case is referred to the Commission to consider sanctions.

Clearance Prior to Making the Investment

A transaction that is subject to pre-merger control may not be put into effect prior to clearance by the HCC (suspension), unless partial or whole derogation is granted. Exceptionally, the HCC may, upon request, allow the implementation of a concentration pending completion of its assessment in order to prevent serious damages to one or more undertakings concerned or to a third party (full derogation). In practice, the HCC has been reluctant to grant derogations in recent years. Partial derogation may be granted in stock exchange transactions or acquisitions through public bids. The Greek Competition Act does not provide for any other exceptions allowing the parties to implement a transaction prior to approval. If a transaction is implemented prior to receiving approval, sanctions are imposed and the HCC may order the separation of the undertakings through the dissolution of the merger.

6.2 Criteria for Review

The substantive test for assessing the legality of a notified transaction under the Greek Competition Act is whether the notified transaction is likely to significantly restrict competition in the national market or in a substantial part thereof, taking into account the characteristics of the products or services involved, particularly by creating or strengthening a dominant position. No specific threshold for dominance is set by the Greek Competition Act. This is why the HCC follows the European Commission's guidelines.

To assess if the concentration may impede competition, the HCC will take into consideration:

- the structure of the relevant market(s);
- the actual or potential competition from undertakings within or outside Greece;
- the existence of legal or actual barriers to entry;
- the market position of the undertakings concerned and their financial and economic power;
- the alternatives available to suppliers and users, and their access to suppliers or markets;
- the supply and demand trends for the relevant goods or services;
- the interests of intermediate and ultimate consumers; and
- the contribution in the development of technical and economic progress, provided that such development is to the consumers' advantage and does not form an obstacle to competition.

6.3 Remedies and Commitments

If the HCC suspects a violation of Articles 1, 1A and 2 of Law 3959/2011 (or Articles 101 and 102 of the Treaty on the Functioning of the European Union), it may by its decision accept commitments of the involved parties to stop the suspected violation and to make these commitments mandatory. The Commission's decision can be issued for a specific period of time as long as it is judged that there are no grounds for further action. The Commission may, following an application submitted by any interested party or ex officio, re-initiate the procedure if:

- there is a substantial change in the facts on which the decision was based;
- the companies involved breach the commitments they have undertaken; or
- the decision was based on incomplete, inaccurate or misleading information of the companies concerned.

The undertakings may jointly make modifications to the concentration or propose commitments to the HCC in order to address any serious doubts as to the transaction's compatibility with the requirements of competition in the market. The terms, conditions, the procedure for accepting commitments on behalf of the companies or associations of companies concerned are determined by a decision of the Commission. Decision 524/VI/2011 of the HCC determines the content of the notification form on remedies.

Overall, the HCC follows the European Commission's Notice on Remedies of 22 October 2008 and EU case law in assessing merger remedies. Parties wishing to propose commitments must complete and file the relevant form. In practice, commitments that are structural in nature are preferable as, over the longer term, they prevent the competition concerns, which would be raised by the merger as notified.

6.4 Enforcement

If there are doubts that the merger is compatible with competition, the HCC does not grant per-

mission. As a consequence, FDI is blocked. After granting permission, the HCC may only impose post-closing filing obligations to monitor compliance with the terms of its decision clearing a concentration. All decisions of the HCC can be appealed before the Athens Administrative Court of Appeal. Appeals to the Athens Administrative Court of Appeal must be submitted within 60 days from the date of service of the contested decision to the parties or its publication (as regards third parties). Court action does not suspend the execution of the HCC's decision unless the appeal court issues a relevant order. The appellate judgment can be appealed to the Council of State, the Supreme Administrative Court.

The HCC may impose administrative sanctions for failure to comply with the merger control rules of the Greek Competition Act. Criminal sanctions may also be imposed. The HCC may also order the separation of the undertakings concerned, in particular through the dissolution of the merger or the sale of the shares.

7. Foreign Investment/National Security

7.1 Applicable Regulator and Process Overview

Clearance Procedure According to Law 4399/2016

The review process includes the following: an application together with all required documentation is submitted before the Ministry of Development and the respective review by the authority follows (Article 50 of Ministerial Decree No 500/2020). Additional time may be needed, if objections are raised.

As regards the investment security mechanisms on the grounds of security and public order, the respective applicable legal framework is that of the EU, ie, the Screening Regulation (in force as of 11 October 2020).

Other key regulatory authorities governing foreign investment in Greece are:

- in the field of telecommunications and postal services, the Helenic Telecommunications and Postal Commission (EETT);
- in the energy field, the Regulatory Authority of Energy (RAE);
- in the mining sector, several bodies, such as the Institute of Geological and Mineral Exploration, the General Directorate of Natural Resources at the Ministry of Development; the Northern and Southern Greece Mines Inspectorates; and local prefectures, which grant most of the concession and leasing rights for the exploitation of minerals;
- in the water sector, the Ministry of Environment and Energy and the regional departments for the Administration of Water Resources;
- in the field of tourism, the Hellenic Tourism Organisation;
- in the pharmaceutical sector, the National Organisation for Medicines;
- in shipping, the Ministry of Shipping and Island Policy; and
- in the field of capital markets, a number of bodies, the most important of which are the Bank of Greece, the HCMC, and the General Secretariat for Investments and Development.

The legislation regarding the organisation of the Hellenic Ministry of Foreign Affairs (the national competent authority for FDI screening), which entered into force on 28 February 2021, includes a specific clause designating the new depart-

ment which will be responsible for FDI screening on the basis of the relevant EU legislation. The new department will be responsible for the operation of the contact point for the implementation of the FDI Screening Regulation, as well as for the operation of the national screening mechanism currently under preparation.

7.2 Criteria for Review

Investment Incentives of Law 4399/2016

Beneficiaries

Aid beneficiaries of the aid schemes are enterprises established or having a branch in the Greek territory at the time of start of works of the investment project in one of the following forms:

- personal business;
- trading company;
- co-operative;
- social co-operative enterprises of Law 4019/2011 (Gov Gaz 216, Vol A), agricultural co-operatives, producers groups, rural partnerships of Law 4384/2016 (Gov Gaz 78, Vol A);
- companies under establishment or merging companies, with the obligation to have completed the publicity procedures before the start of works of the investment project;
- businesses operating as a joint venture provided they are registered with the General Commercial Registry (GCR); and
- public and municipal companies and their subsidiaries, provided that:
  - (a) they have not been assigned to serve the public purpose;
  - (b) they have not been exclusively assigned by the state to provide services; and
  - (c) their operation is not funded by public funds for the period of compliance with the long-term obligations of Article 21.

Businesses whose eligible amount of investment projects exceeds EUR500,000 and are included in the aid schemes hereof are required to take the legal form of a commercial company or co-operative before the start of works of the investment project.

Evaluation

The completeness of the submitted applications and the related supporting documents are checked by the directorates of development planning at regional level, based on standard completeness control system. Every investment project will, under penalty of exclusion, comply with the following conditions:

- full agreement of the application for inclusion and the investment project to be approved with the terms;
- documentation of the solvency of the project operator by producing the relevant certificates, such as particularly tax and social security clearance and any other certificate as defined in the notice; and
- documentation of the financing ability of the cost of the investment project either through own resources or by external financing.

The evaluation is carried out either by the method of benchmarking or by the method of direct evaluation, as specified in the relevant decision of notice regarding the aid schemes. The evaluation procedure must be completed within 30 days. The investment projects that meet the legal requirements may qualify for the aid schemes by individual inclusion decisions.

Control

Investment projects under aid schemes must be checked during their implementation, upon completion and commissioning of the investment and for meeting their long-term obliga-

tions. The control may pertain to the documents of the dossier ("administrative control") and/or may consist of on-site control.

7.3 Remedies and Commitments

The authority does not request more commitments.

7.4 Enforcement

The relevant authorities can only issue an approval or disapproval of the investment. After the approval, they are competent to supervise the investment. According to Law 4399/2016:

- the appeals provided for in Article 14 are adjudicatory appeals filed electronically through the State Aid Information System within ten days of the notification of the related act;
- the committee considering the appeals will be established by decision of the competent bodies of paragraph 7 of Article 14 and is composed of three members from the competent agencies of paragraph 2 of Article 13 – the committee must rule within 15 days from the date of filing the appeal; and
- the composition, the conditions and the operating rules of the appeals committee must be set out in the relevant decision of notice.

If the investment requires a prior approval and the investor has not acquired it, the competent authorities impose the discontinuity of the investment.

8. Other Review/Approvals

8.1 Other Regimes

Greek law imposes mild restrictions on foreign ownership or occupation of real estate. These concern only foreign individuals or legal entities of non-EU states and EFTA member states who are interested in acquiring a personal right in immovable property located in border regions (Article 24, Law 1892/1990). They can request the lifting of such restrictions through a petition indicating the purpose of the property's use.

In addition, the Greek government retains and exercises some control over certain industry sectors only through stakes (which can sometimes be majority ones) in former state monopolies that have been converted into private or listed companies and now compete in liberalised industry sectors. Examples of such companies are:

- the Hellenic Post SA;
- the Hellenic Railways Organisation (TrainOSE SA);
- the Hellenic Broadcasting Corporation;
- the Public Power Corporation (especially in the case of natural monopolies such as the power grid);
- the Hellenic Independent Transmission System Operator (IPTO);
- the Hellenic Distribution System Operator (HEDNO); and
- the Hellenic Telecommunications Organisation.

9. Tax

9.1 Taxation of Business Activities

According to Article 6 of the Income Tax Code (ITC), a business that has its registered seat or a permanent establishment in Greece must pay tax on its taxable income arising in Greece and abroad (that is, its annual worldwide income). A permanent establishment results from any fixed place of business through which business is wholly or partly carried out and includes:

- a place of management;
- a branch;
- an office;
- a factory;
- a workshop;
- a mine;
- an oil or gas well;
- a quarry;
- any other equivalent place; and
- a building site or construction or installation project or any other activity supervisory to any of these if it lasts for more than three months.

For income earned from the fiscal year 2020 onwards, an income tax rate of 22% is applicable to business incorporated in the form of:

- *sociétés anonymes;*
- limited liability companies;
- private companies;
- partnerships in the form of a limited partnership or general partnership; and
- other legal persons and entities defined in the ITC.

All partnerships are subject to this tax rate, regardless of whether they maintain single-entry or double-entry accounting books (Articles 45, 47(2) and 58(1α), ITC).

Value Added Tax (VAT)

The standard VAT rate is currently 24%. There are also two reduced rates of 13% (eg, for certain social services and hotel accommodation) and of 6% (eg, for certain pharmaceuticals, publications and the supply of electricity).

Stamp Duty

Stamp duty is levied on some transactions, documents and contracts, which are not subject to VAT. The most notable cases where stamp duty applies are the following:

- a 3.6% stamp duty rate applies exclusively to commercial (and not residential) property leases;
- private loan agreements are subject to 2.4% or 3.6% stamp duty, depending on the contracting parties; and
- commercial loan agreements are subject to 2.4% stamp duty.

Cash withdrawal facilities granted to shareholders and partners are subject to 1.2% stamp duty.

9.2 Withholding Taxes on Dividends, Interest, Etc

Under Law 4646/2019, dividends distributed by a Greek legal entity are subject to Greek withholding tax at a rate of 5%. However, there is no withholding tax if the receiving legal entity satisfies all the following requirements.

- It directly owns shares that represent at least 10%, by value or number, of the share capital or rights to profits or voting rights of the Greek legal entity.
- It has directly owned the 10% shareholding for at least 24 months. However, if all other requirements are met, save the 24-month rule, the Greek legal entity can temporarily choose not to withhold the 10% Greek tax if it makes available to its tax office a bank guarantee that is equal to the amount of the withholding tax (ITC).
- It is established in one of the legal forms set out in Annex I, Part A of Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states.

- It is a tax resident of an EU member state and cannot be deemed to be a resident of any third country.
- It is subject to one of the taxes set out in Annex I, Part B of Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states.

9.3 Tax Mitigation Strategies

There are no tax mitigation strategies.

9.4 Tax on Sale or Other Dispositions of FDI

The Greek jurisdiction does not offer any peculiar tax exemptions for capital gain of a foreign investor. EU legislation and double tax treaties define the tax regime in a uniform way.

9.5 Anti-evasion Regimes

Transfer Pricing

If one or more transactions are concluded between Greek legal entities or companies and affiliated persons under financial and commercial terms different from those that would have been agreed between non-associated persons (independent companies) or between connected persons and independent third parties, as defined in the ITC, any profits that each Greek company would have made if such financial and commercial terms were not agreed on (the arm's length principle) are added to its taxable income, only to the extent that such income does not decrease the amount of payable tax. The arm's length principle is applied and construed according to the OECD general principles and guidelines (Article 50, ITC).

The ITC defines an affiliated company as a person (company or individual) that directly or indirectly participates in the management, control or capital of another person with whom that person is related or associated. In particular, the following persons (companies or individuals) are considered associated/affiliated persons:

- any person who owns (directly or indirectly) stocks, shares, or shareholding of at least 33%, by value or by number, or profit rights or voting rights;
- two or more persons if a third person owns (directly or indirectly) stocks, shares, voting rights or participation in the capital of at least 33%, by value or by number, or profit rights or voting rights; and
- any person with whom there is a direct or indirect relationship of substantial management dependency or control, or who has or could potentially have a decisive influence on another person, or where both persons have a direct or indirect relationship of substantial management dependency or control with a third person, or are potentially influenced by such third person (Article 2, ITC).

In addition, in order to comply with the arm's length principle, Greek companies and permanent establishments of foreign companies in Greece are required to:

- keep a transfer pricing (TP) documentation file, which must consist of the master file and the Greek documentation file (Article 21(1), Statute 4174/2013, Tax Procedure Code (TPC)); and
- submit a summary information table for each tax year (Article 21(3), Statute 4174/2013, TPC).

Companies are exempt from this obligation if all intra-group transactions concluded by a Greek company do not exceed either of the following:

- EUR100,000 per tax year (if the annual turnover of the Greek company is up to EUR5 million); or
- EUR200,000 per tax year (if the annual turnover of the Greek company exceeds EUR5 million).

(Article 21(2), Statute 4174/2013, TPC.)

Under Article of the TPC, the filing of the above is subject to the following time requirements.

- The TP documentation file must be:
  (a) prepared before the filing deadline for income tax returns; and
  (b) made available to the Tax Administration, within 30 days of serving the relevant request. The transfer pricing report must be submitted to the competent tax auditors within the time requested, which cannot exceed 30 days from the relevant request.
- The summary information table must be submitted electronically to the Tax Administration by the filing deadline for income tax returns.

Fines can be imposed for:

- late filing;
- failure to file; and
- inaccurate/incomplete filing of the:
  (a) summary information table; and
  (b) TP documentation file.

In the case of late filing or inaccurate/incomplete filing of the summary information table, a fine will be imposed amounting to one thousandth of the transactions of the taxable person for which there was an obligation for documentation. This fine must be between EUR500 and EUR2,000 (Article 56(1), TPC).

In the case of late filing of a summary information table, a fine will only be imposed if there are changes in the amounts of the transactions and the overall differences are above EUR200,000 (Article 56(1), TPC). In the case of inaccurate filing of the summary information table, the fine will be calculated based on the amounts related to the inaccuracy and will be imposed only if such inaccuracy is higher than 10% of the overall transactions for which there was an obligation for documentation (Article 56(1), TPC).

If the summary information table is not filed, a fine will be imposed amounting to one thousandth of the transactions for which there was an obligation for documentation. The fine must be between EUR2,500 and EUR10,000 (Article 56(2), TPC).

In regard to the TP documentation file, if the TP documentation file is made available to the Tax Administration:

- from the 31st day after the notification of a relevant invitation until the 60th day, a fine equal to EUR5,000 will be imposed; and
- from the 61st day until the 90th day, a fine equal to EUR10,000 will be imposed.

If it is not made available at all or if it is made available after the ninetieth day, a fine equal to EUR20,000 will be imposed (Article 56(3), TPC).

Greece allows the use of unilateral Advance Pricing Arrangements (APAs) between Greek companies, or permanent establishments of foreign companies in Greece, and the Greek Tax Administration (Article 22, TPC). The APAs cover the applicable transfer pricing methodology for specific future cross border transactions with associated/affiliated companies. APAs can last for up to four years and cannot be issued for a

fiscal year before the year of submission of the APA application.

Thin Capitalisation Rules

Excess borrowing cost is not deductible for Greek income tax purposes if the amount of redundant interest exceeds 30% of the taxpayer's (that is, the Greek company's) earnings before interest, tax, depreciation and amortisation (EBITDA) (calculated according to Greek accounting rules and adjusted in accordance with the ITC). By way of derogation, the taxpayer can fully deduct excess borrowing costs up to EUR3 million.

10. Employment and Labour

10.1 Employment and Labour Framework

Greek labour law is governed by a large number of different laws as well as labour regulations. An employment relationship is generally governed by the employment contract. Nevertheless, there are mandatory provisions of law, regulations and collective agreements that prevail over an employment contract, if the latter includes less favourable provisions. It is also highly formalised, as the majority of actions regarding the employment relationship must be made known to the competent authorities. Over the last years, many practices of work flexibility as well as a reduction of the minimum wage have been implemented in order to make the country more attractive to investments. In general, the purpose of the applicable legislation is to reduce the cost of labour and make the Greek employment market more competitive. On the other hand, various provisions have been instituted to protect vulnerable groups, such as older employees.

The main areas that have been affected from a labour law perspective sine the economic/fiscal crisis are the following:

- a more versatile system of collective labour agreements or negotiations;
- the abolishment of the referring procedure regarding collective labour disputes to an organisation for mediation and arbitration;
- raising the thresholds for group dismissals and, subsequently, abolishing the authorities' prior approval;
- reducing severance pay and allowing its repayment in instalments;
- introducing more flexible employment terms for employees under the age of 25;
- extending probationary periods, enabling greater use of part-time work, moderating wages for overtime, and introducing compensation connected to a business' productivity; and
- the salaries are temporarily frozen (initially) for three years following the conclusion of the memorandum.

Employees in Greece establish trade unions that play an important role because they have the ability to sign a collective labour agreement with an employers' organisation. In other words, they have regulating powers. These unions are organised at three levels; there are primary trade unions, secondary and two national ones that sign the national general collective agreement, which is binding for all labour agreements. The collective bargaining is on a general national level, national sectoral, inter-sectoral, professional, local sectoral or a company-based level.

Nowadays, the company-based agreements prevail even though they contain less favourable wage terms than those of the respective sectoral/professional collective agreements or the

national general collective agreement. However, a company-based agreement cannot set lower wages than those set by the government and must comply with the national minimum wage.

10.2 Employee Compensation

According to Article 2, paragraph 2 of P.D. 156/1994, the terms of the contract or employment relationship which the employer must notify the employee include the following:

- the amount of compensation due and the deadlines that must be observed by the employer and the employee, in accordance with the applicable legislation, in the event of termination of the contract or employment relationship by termination;
- all types of remuneration to which the employee is entitled and the periodicity of their payment; and
- reference to the collective regulation that applies and determines the minimum terms of pay and work of the employee.

According to Article 2, paragraph 3 of P.D. 156/1994, the information on the conditions related to the duration of leave, the amount of the compensation, the employee's remuneration and the duration of the normal daily and weekly employment as well as the minimum remuneration conditions can also be made by referring to the applicable provisions of labour legislation.

Payments must be made on the same day of the month and no later than the final working day of the month in Greece, where the payroll cycle is typically monthly.

According to Greek legislation, all employees working in the private sector are entitled to two additional monthly salaries, which can be split into three payments for Christmas, Easter and holiday bonuses. All of the aforementioned bonus payments must be made in cash only and cannot be made in kind. By 21 December, the Christmas bonus payment must be made. Employees should submit an application to the appropriate labour inspectorate if the Christmas bonus is not paid on time. The appropriate fines must be imposed, and this is the responsibility of the labour inspectors.

10.3 Employment Protection

The consent of employees is not required in a transfer. According to Article 5 of Presidential Decree 178/2002, an acquisition is not a reason for dismissal and the employees should continue to work for their new employer, because the employment relationship is transferred automatically. Nevertheless, employees can be dismissed for other reasons (fiscal, technical organisational). In addition, the acquisition should not result in a harmful modification of the employment's terms. In this case, it is considered that the employment contract is terminated due to the initial employer's fault and the employee is entitled to compensation.

The initial and the subsequent employer are required to inform and consult the representatives of the employees affected by the transfer. This information should be given before the transfer takes place. Otherwise, fines are imposed. Similarly, if the initial or the subsequent employer consider making changes to employment relationships, they should consult the employee representatives beforehand in order to reach an agreement.

11. Intellectual Property and Data Protection

11.1 Intellectual Property Considerations for Approval of FDI

Response Greece is a signatory to:

- the WIPO Paris Convention for the Protection of Industrial Property 1883 (the "Paris Convention"); and
- the Berne Convention for the Protection of Literary and Artistic Works 1886 (the "Berne Convention").

Additionally, due to the uniform protection of intellectual property in the EU, Greece has the same measures and procedures relating to the protection of industrial property and copyright that are found in other EU member states. As a member of the EU, Greece has harmonised its IPR legislation with EU rules and regulations. The WTO-TRIPS Agreement was incorporated into Greek legislation in February 1995 (Law 2290/1995). The Greek government also signed and ratified the WIPO internet treaties and incorporated them into Greek legislation (Laws 3183 and 3184/2003) in 2003. Greece's legal framework for copyright protection is found in Law 2121/1993 on copyrights and Law 2328/1995 on the media.

Therefore, it is important to check if the intellectual property right can be recognised by Greek law. For instance, if a sign lacks a distinctive character, it cannot be registered as a trademark. In addition, the duration of the right's protection should also be taken into account. Patents grant a 20-year protection, whereas copyright is protected throughout the author's life plus 70 years. Another important point is the rights they offer, the most important of which are exclusivity and commercial exploitation. Additionally, due to the uniform protection of intellectual property in the EU, Greece has the same measures and procedures relating to the protection of industrial property and copyright that are found in other EU member states.

11.2 Intellectual Property Protections

"Intellectual property, related rights and cultural matters" pursuant to Law 2121/1993, as an intellectual creation of speech, art or science expressed in any form accessible to the senses, is protected by intellectual property–which includes the right to exploit it (property right) and the right to protect the creator's personal link to it (moral right), should it meet the conditions of the general clause (Article 2, paragraph 1), ie, if it is original. The intellectual creator acquires automatically (without typical formalities) the exclusive and absolute right to exploit the property right and the right to protect the personal link with it (moral right). This principle also applies when the work is created following an order or by an employee in the context of a dependent employment relationship, in which case the principal and the employee automatically acquire the intellectual property rights in the oeuvre. Intellectual property lasts as long as the creator lives plus 70 years after their death.

Intellectual property and related rights are protected by a network of civil, administrative and criminal sanctions as well as preventive measures. In the case of infringement of intellectual property, the creator can raise a suit for the recognition of his right, an action for the removal of the infringement and its omission in the future, an action for the return of excessive profit, an action for the return of profit and an action for compensation and monetary satisfaction due to moral damage. In particular, the infringement of an absolute and exclusive right, such as the right of intellectual property, constitutes an illegal act

and, if done culpably, constitutes a tort, because it involves in itself opposition to the exclusive power of the beneficiary.

The maintenance of a high level of protection of intellectual property rights and related rights in the digital single market and with the right of public borrowing and the reproduction of an additional copy by non-profit libraries or archives (amendment of Law 2121/1993 and Law 4481/2017; incorporation of Directives (EU) 2019/789, (EU) 2019/790 and 2006/115/EC). For the first time, the use of intellectual creations and, in general, objects protected by intellectual property legislation in digital teaching activities is regulated.

11.3 Data Protection and Privacy Considerations

Since 2018, the General Data Protection Regulation (GDPR, or the "Regulation") of the EU is in force. The GDPR includes strong data protection rules that enhance how people can access information about them and limits data processing to the minimum. The Regulation's principles are lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality (security) and accountability. There are also provisions of fines in case the Regulation is breached by not processing data in the correct way or if there is a security breach.

The Regulation applies to the processing of personal data in the course of an activity which falls within the EU, regardless of whether the processing takes place in the Union or not. Moreover, the Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union or to the monitoring of their behaviour as far as their behaviour takes place within the Union.

GDPR fines are imposed by each member-state's supervisory authority. The competent authority in Greece is the Hellenic Data Protection Authority. Many factors are taken into account in order to impose the fine, such as the nature, gravity and severity of the infringement, the decree of responsibility, and any previous infringements. A fine can be as much as EUR20 million or 4% of the total worldwide annual turnover of the offender. Therefore, in many cases the fine that comes as a result of the infringement can be higher than the economic loss caused.

12. Miscellaneous

12.1 Other Significant Issues

There are no further issues to report.

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