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The International Comparative Legal Guide to:

Mergers & Acquisitions 2013

7th Edition

A practical cross-border insight into mergers and acquisitions

Published by Global Legal Group, with contributions from:

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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd.
March 2013

ISBN 978-1-908070-52-4
ISSN 1752-3362

Strategic Partners

AEJE ECLA

MIX
Paper from responsible sources
FSC® C011748

General Chapters:

Country Question and Answer Chapters:

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Mergers & Acquisitions*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of mergers and acquisitions.

It is divided into two main sections:

Five general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting mergers and acquisitions, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in mergers and acquisitions in 41 jurisdictions.

All chapters are written by leading mergers and acquisitions lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Hatchard of Skadden, Arps, Slate, Meagher & Flom (UK) LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

The regulatory regime regarding M&A activities in Greece comprises the provisions of the following statutes:

a. **Codified Law 2190/1920** on Societes Anonymes, as amended by Law 3604/2007, and **Law 3190/1955** on Limited Liability Companies, which contain the guidelines of M&A procedures of Societes Anonymes and Limited Liability Companies, respectively.

b. **Law 3461/2006** implementing Directive 2004/25/EC, which regulates public takeovers, as recently amended by **Law 3943/2011**.

c. **Law 3340/2005**, implementing Directive 2003/6/EC, on the protection of the Capital Market from abuse of privileged information and market manipulation.

d. **Law 3371/2005**, implementing Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published about those securities.

e. The Athens Stock Exchange rulebook, which sets out the procedural requirements for the listing of new shares.

Regarding tax issues and incentives referring to M&A activities in Greece, the main statutes, in chronological order, are:

a. **Law 1297/1972**: The incentives included in the current statute, such as exemptions from stamp duty and the transfer tax on real estate, apply not only in cases where two or more entities are merged, but also where an entity is converted from its existing legal form into either a Societe Anonyme or a Limited Liability Company.

b. **Law 2166/1993** which provides several benefits, such as the fact that assets and liabilities are transferred to the new company at book values confirmed either by a certified auditor or by the tax authorities and thus no revaluation gain arises and the exemption from real estate transfer tax, stamp duty and other taxes on contracts.

c. It is noted that Laws 1297/1972 and 2166/1993 must be opted-in, otherwise ordinary company law provisions apply.

d. **Law 2515/1997 (Art. 16)**, which is mandatorily applicable, sets the regulatory framework for transformations of Greek Banks and provides guidelines in relation to their activities within the geographical region of the European Union.

e. **Law 2578/1998**, implementing the EU Mergers Tax Directive (Directive 90/434 and Directive 2005/19 amending Directive 90/434), as amended by Law 3517/2006, applies to mergers, demergers, partial demergers, contribution of assets and exchange of shares between companies established in different EU Member States.

f. **Law 3777/2009**, implementing the EU Directive 2005/56, is applicable to cross-border mergers of companies of different Member States. The tax benefits of Law 2578/1998 also apply to cross-border mergers.

g. **Law 3959/2011** (Greek Competition Law), which sets out the power of the Hellenic Competition Commission to review mergers, as long as particular thresholds are met.

1.2 Are there different rules for different types of company?

Yes. It should be noted that no codified legislation regarding M&As exists in Greece. On the basis of the type of company involved in the merger or acquisition, different rules may be applicable. For the purposes of this chapter, and given the space constraints, a general distinction is made between listed and non-listed companies, and based on this distinction, the relevant questions are answered.

1.3 Are there special rules for foreign buyers?

No, the same rules apply to foreign buyers.

1.4 Are there any special sector-related rules?

There are special sector-related rules, for instance with regard to credit institutions or companies providing insurance services.

For **bank credit institutions**, apart from the general legal provisions, Article 16 of Law No. 2515/1997 provides that any administrative licences, and in general all public law relationships, of institutions to be merged are transferred *ipso jure* to the new entity, also applies.

With regard to **insurance companies**, any transformation or merger is supervised by the competent authority of the Ministry of Development, according to the provisions of the Legislative Decree 400/1970, which are mandatorily applicable.

1.5 Does protectionism operate in favour of local owners?

No. Apart from an examination of formalities by the administration (analysed below), the only assessment of the effects of a proposed M&A is carried out by the Hellenic Competition Commission. For this assessment, the parties have to notify the transaction, in case the relevant thresholds set by Greek Competition Law (Law 3959/2011) are met.

In relation to the examination of formalities, the competent administrative authorities (represented by the local prefectures)

monitor the legality of such transformations in compliance with the provisions of the Greek law. Competence to examine the formalities of a transaction is determined on the basis of the registered seat of the companies involved.

Indicative examples of the control exercised are the observance of the formalities regarding the general meetings of the shareholders, the terms included in the merger plan and the existence of a subsequent merger agreement and relevant audit report.

With regard to public offers, the Stock Exchange Commission also has the competence to assess whether the content of the prospectus meets the requirements of the provisions of Law 3461/2006, which implements Directive 2004/25/EC on Takeover Bids, in relation to information concerning bids, the time allowed for acceptance, the disclosure, the obligations of the board of the offeree company, etc.

1.6 What are the principal sources of liability?

The basic principles of liability are determined in the aforementioned statutes, along with the provisions of the Greek Civil Code.

With regard to public takeovers, the law on the protection from abuse of privileged information and Law 3340/2005 on market manipulation should be highlighted, since, unlike other countries, in Greece there is no specific regulatory framework according to which a bidder can purchase target shares prior to the bid. The Hellenic Capital Markets Commission (HCMC) acts as a supervisor of the whole process and may impose fines in case the aforementioned provisions are infringed, since the only obligation of a potential buyer is to comply with the provisions set out in Law 3340/2005.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

Indicative examples of alternative means of acquisition are as follows:

Consolidation (merger by the formation of a new company): the combination of two separate companies into a new company with a distinct legal personality. In this case, both (merging) companies cease to exist.

Absorption merger: one company fully absorbs the assets and liabilities of another. The later company ceases to exist, while the former takes over its assets and liabilities.

Merger through buy-out: which is realised by either a share deal, where the buying company buys out shares of the target company, or by an asset deal, where the buyer purchases the target company itself and all of its assets.

Split: where a company is dissolved without liquidation, resulting in the formation of two separate legal entities or the establishment of a new one.

Spin-off: where a part of a company is transferred to another company.

Public buyout offer: the buying company addresses a public offer to buy a part of the common shares of the target company at a fixed price and within a deadline. The outcome of this procedure is usually that the buying company takes the management control of the bought company and is subject to special capital market provisions. The public buyout offer can be executed either voluntarily or mandatorily (the latter if certain criteria set out in Law 3461/2006 are met).

2.2 What advisers do the parties need?

Both legal and financial advisors are needed to deal with the crucial issues of due diligence. In addition to that, in cases of a public offer, the relevant law (Law 3461/2005) requires that the documentation of the public offer is signed by a credit institution or an investment services company, which certifies the accuracy of the information included in the prospectus.

2.3 How long does it take?

The timing required for the completion of an acquisition is dependent on the type of acquisition chosen and the legislation under which it is performed.

An indicative example is a public buyout which consists of several actions:

- Initially, the notification to the BoD of the target company regarding the initiation of the process on behalf of the bidder, along with the publication of the relevant documentation on the necessary websites, is performed.
- Within ten business days, the HCMC has to approve the draft prospectus.
- Within three business days following approval of the prospectus, the prospectus has to become publicly available, at branches of the bidder and on the website of the bidder and its advisor.
- The following step is the submission of the prospectus to the BoD of the target company and its communication to the employees of the target company.
- Following the submission of the prospectus, there is a ten-day period for the BoD of the target company to opine on the offer.
- The relevant opinion, which must be notified to the HCMC, needs to be justified and accompanied by an analytical report conducted by the financial advisor.
- There is a further four to eight-week period for the target company to accept the offer.
- Within two business days following this period, the outcome of the public offer must become publicly available and must also be submitted to the employees of the target company.

2.4 What are the main hurdles?

The hurdles that may occur relate mainly to the process of collecting the necessary documentation required by the HCMC or the Competition Commission.

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

In cases of a merger of non-listed companies, the parties are free to decide about the terms of the agreement (as long as they meet the general formal requirements set by the law, as presented in question 1.5 above).

In the case of mandatory public offers, there are certain limitations concerning the determination of the price of each share, which cannot in any circumstance be less than the average market price of the last six-month period or than the price at which the bidder had acquired other shares during the last twelve-month period.

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

On the basis of the provisions of Art.9 Law 3461/2006, in the case

of voluntary offers, the bidder is free to offer securities as well as cash.

On the contrary, in the case of mandatory offers, the target's shareholders should be provided with the option to demand the consideration in cash.

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

Depending on the type of offer, different rules are applicable. In the case of non-listed companies the existence of preferential shares or special provisions included in the Articles of Association or in a Sharholders' Agreement may result in special treatment and, consequently, special rights granted to particular shareholders.

In the case of public takeovers, the same terms have to be offered to all shareholders.

2.8 Are there obligations to purchase other classes of target securities?

No such obligation exists under the Greek legislation.

2.9 Are there any limits on agreeing terms with employees?

The Greek labour legislation preserves the employment relationship in its entirety in the transformed corporate entity. That said, in public takeovers, the new employer does reserve the right to make dismissals for economic or technical reasons, provided that he has set out in the prospectus his strategic plans in relation (among others) to the status of the employees. In case the employees opine negatively on the proposal because of a potential disruption of employment relationships, their opinion should be attached to the report of the BoD, according to Art. 15 of Law 3461/2006.

2.10 What role do employees play?

In the case of public takeovers, as mentioned above, the law requires that the BoD should forward the prospectus of the public offer to the employees of the company, who are required to file a relevant commentary report which the BoD is obliged to include in its report. Therefore the employees are actively involved in the whole process.

2.11 What documentation is needed?

In addition to the necessary submission of offer documentation, which consists of approvals and licences granted by the relevant competent authorities, certain other documents are needed. The required documents vary on the basis of the type of acquisition to be executed. In particular:

- Where the transaction involves non-listed companies, the following documentation is required:
  - the Merger Agreement;
  - the report containing the evaluation of assets;
  - the reports of the BoD of both companies and the respective BoD decisions regarding the proposed M&A;
  - the decision of the General Assembley of both companies on the M&A proposal; and
  - the documentation relating to the notification of the companies to the competent administrative authorities.
- In public takeovers, the bidder has to provide:
  - the Public Offer, which should contain the details required by the relevant legislation; and
  - the Prospectus, the content of which has to be made public by the bidder.

Respectively, in relation to the target company, its BoD has to provide a justified opinion, along with a report (drafted by the financial consultant) demonstrating the financial status of the company, which is submitted to the HCMC and to the bidder and notified to the employees.

Moreover, the credit institutions involved in the public offer (or takeover) should provide justified statements confirming that the bidder is capable of submitting the required for the acquisition amount.

Finally, the process is completed with the Declaration of Acceptance, by which the shareholders of the target company accept the offer.

2.12 Are there any special disclosure requirements?

Under the Greek Law, there is a minimum amount of information that should be disclosed; that said, the particular information to be disclosed depends on the type of the companies involved in the merger or acquisition and the relevant legal framework that applies.

For instance, with regard to M&As (absorptions, mergers or consolidations) of non-listed SA, Art. 79 of Law 2190/1920, as amended, requires that a merger plan has to be published. The plan must contain the following:

- The details (corporate name, registered seat, etc.) of the companies involved.
- The value of the shares to be given to the shareholders of the absorbed, new or bought company.
- The procedure that will be followed for the transfer of the shares and the date in which the shares acquire the relevant participation rights.
- The rights that are ensured by the acquiring company towards shareholders with a special status or holders of titles other than shares.
- Any special privileges to be attributed to the members of the BoD and auditors of the companies involved in the transaction.

In relation to public offers, as mentioned in question 2.3 above, the bidder has to make the prospectus publicly available; among other things, the prospectus has to contain: the corporate name and seat of the target company; the name of the bidder (in case of a legal entity: its corporate name, form, seat); the details of the advisor of the offeror; the securities or class of securities that are subject to the takeover bid; the maximum number of securities that the offeror is undertaking (in case of a voluntary takeover bid) or is required (in case of a mandatory takeover bid) to acquire; and the consideration offered for each security, etc. (Art. 11 of Law 3461/2006 includes the detailed list of required information).

2.13 What are the key costs?

With regard to public buyouts, the key costs relate to the process of publication of the necessary documentation, the fees requested by the legal and financial advisors, the consideration which is approved and certified by the competent authorities and the expenses occurring during the transaction itself.

On the other hand, where non-listed companies are involved, there are additional expenses deriving from the provisions of tax laws, which are briefly analysed into the capital concentration tax and the

taxation of assets, subject to special provisions included in the legislation referring to tax incentives. A duty in favour of the HCC (of 0.1% of the capital) is also applied.

2.14 What consents are needed?

In relation to non-listed companies, the express consent of the BoD and the General Assembly of the target company is required.

Additionally, with regard to public takeovers the law requires approval of the takeover offer and the Prospectus granted by the HCMC.

If the relevant requirements and thresholds set by the competition legislation (Law 3959/2011) are met, then the deal has to be notified to the Hellenic Competition Commission, and a clearance by the HCC is required in order for the transaction to go through.

2.15 What levels of approval or acceptance are needed?

The approval or acceptance requires a decision by the majority of two thirds of the fully paid capital of the General Assembly, unless otherwise specified in the relevant Articles of Association of the company involved in the M&A.

2.16 When does cash consideration need to be committed and available?

Following the aforementioned in question 2.6, in the case of a public takeover, when the consideration offered is in cash, a credit institution with its registered seat in Greece or in an EU Member State bears the obligation to certify that the relevant bidder is capable of paying the full amount needed.

3 Friendly or Hostile

3.1 Is there a choice?

The distinction between "friendly" and "hostile" is relevant in the case of public buyouts and depends on the reaction of the BoD of the target company towards the buyout offer. In this regard, hostile buyouts are those where the BoD of the target company objects to the potential buyout of the company and, despite the objection, the buyout is attempted by the bidder.

3.2 Are there rules about an approach to the target?

Rules about approaching the target may be of some relevance in relation to public buyouts, where there is an obligation on behalf of the potential buyer to inform the HCMC and the BoD prior to proceeding to the submission of the offer. Such disclosure should follow the decision-making process of the potential buyer or should fall within the deadline provided by law in case of a mandatorily public offer.

3.3 How relevant is the target board?

As mentioned above, the decision and attitude of the board of the target is of importance; while a positive reaction would accelerate the transformation process, a negative one could result in potential offers made by third parties. The general principle of behavioural neutrality of the BoD of the target company applies, as the principle is set out in Art. 14 of Law 3461/2006, according to which the BoD may not act differently from the ordinary behaviour required for the management of the company.

3.4 Does the choice affect process?

Considering that the law directs the BoD of the target company to provide its opinion on the offer, the process is affected to the extent that the BoD is free to use tactics of defence following the relevant decision of the shareholders' meeting or, alternatively, may seek-buyout offers from third parties which seem more profitable. Thus, the behaviour of the BoD either negatively affects crucial factors, such as time and costs, or positively contributes in the completion of the whole process. The behaviour of the BoD towards the offer and the extent to which it affects the process of the merger are defined through the interpretation of the relevant applicable provisions which set out the means of defence and the conditions under which the BoD needs to opine on the offer and justify its opinion.

4 Information

4.1 What information is available to a buyer?

According to the Greek legislation, as set out in all the aforementioned Statutes which regulate the merger proceedings of the various types of companies, the right to information is protected as a general principle and any potential buyer is capable of having access to documents and reports relating to the financial and administrative status of the target company. All companies bear the obligation to make public the AoA, and its amendments, their annual financial reports, powers of the BoD, etc. In practice, the (potential) buyer has all necessary documentation required for carrying out the due diligence.

4.2 Is negotiation confidential and is access restricted?

Confidentiality prevails in business transactions as a general principle. That said, given that in the case of non-listed companies, the particular agreement is a matter of private will, the extent of confidentiality and the accessibility of any kind of information is regulated by the parties through their private agreement. On the other hand, when a public takeover occurs, confidentiality is considered to be essential during the first steps of the procedure, as indicated by the applicable laws, until the publication of the Prospectus and the Offer.

4.3 What will become public?

All the documents referred to in question 2.11 become public.

4.4 What if the information is wrong or changes?

The burden of providing accurate information lies on the bidder and Greek laws suggest that the bidder, his consultant and the drafter of the prospectus are liable for any damages caused to the target company because of inaccurate or non-updated information. The law, however, provides the bidder of a potential public takeover with a rational time-limit within which the bidder should submit any information which contributes to the improvement of the terms and conditions of the relevant offer.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

It is possible that shares are bought outside the offer process, regardless of the final price for which they are purchased.

5.2 What are the disclosure triggers?

With regard to listed companies, the bidder, any natural or legal person holding at least 5% of the voting rights of the target company and the members of the BoD of the company the shares of which are offered as consideration, have to notify within a set deadline, the GCMC and publish on the Daily Price Bulletin every acquisition of shares of the target or the company of which the shares are offered as consideration, along with the respective price. Moreover, every person acquiring at least 0.5% of the target or of the bidder or of the company (the shares of which are offered as consideration) is obliged to declare to the HCMC and to publicise on the Daily Price Bulletin such acquisition, as well as the price and the voting rights.

5.3 What are the limitations and implications?

The bidder has the right to determine the actual amount of shares that he is interested in acquiring. In any other case, he may be forced to acquire all shares offered.

6 Deal Protection

6.1 Are break fees available?

Break fees may be agreed by the parties.

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

The target does have the legal right not to shop the company and to look for alternative bids. Any contrary commitment or term is invalid.

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

Upon receiving the approval of the HCMC, the issuance of shares or the selling of assets of the target company during the acceptance period may be performed.

6.4 What commitments are available to tie up a deal?

The key documents in order for a deal to be considered tied up are the justified opinion of the BoD, along with a financial report drafted by the financial consultants and the relevant commentary of the employees of the target company.

7 Bidder Protection

7.1 What deal conditions are permitted?

Restrictions concerning the imposition of conditions upon an offer on the part of the buyer are detected only in relation to public offerings of listed companies. Art. 22 of Law No. 3461/2006 stipulates that a public offer must generally be made without any conditions. However, there is a possibility for the buyer to make the public offer conditional upon the issuance of any administrative licensing requirements or other essential elements included in the prospectus following the aforementioned provision.

In the case of non-listed companies, conditions are freely agreed by the parties.

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

The bidder is free to withdraw his offer during the process, if there are competitive offers submitted to the target company or if crucial and unforeseen changes occur that make the transaction particularly onerous for the bidder. In the latter case, approval by the HCMC is also required in order for the bidder to revoke the offer. Moreover, the bidder is protected by Greek legislation, which provides him with the safety of limiting the defensive measures available to the target during the acceptance period.

7.3 When does control pass to the bidder?

A bidder which acquires more than 50% of the voting rights of the target company acquires the control of the company. In order to be able to take decisions that require by law a large majority, it is necessary to possess no less than the 67% of the voting rights of the company.

7.4 How can the bidder get 100% control?

There are special provisions both for SA companies with shares listed in the stock-market, as well as for non-listed SA companies.

In the framework of a public buyout offer for listed companies, if the buyer, following a public offer addressed to all shareholders and concerning the total amount of movables of the target company, acquires over ninety per cent (90%) of the total voting rights of the target company, he is enabled to purchase compulsorily all remaining company shares owned by minority shareholders (squeeze-out right).

In addition, in case the bidder acquires over ninety per cent (90%) of the total voting rights of the target company, he is obliged to buy the shares offered by the minority shareholders, within the time limits provided by the relevant law (sell out right).

With regard to non-listed SA companies, the relevant law provides that in cases where a shareholder has more than 95% of the shares, minority shareholders have the right, within five years from the date on which the majority shareholder exceeded the 95% threshold, to request, through a petition to the Court of First Instance, the acquisition of their shares by the majority shareholder.

8 Target Defences

8.1 Does the board of the target have to publicise discussions?

In the case of listed companies, discussions that take place during the early stages of the unofficial offer and the negotiation process do not have to be disclosed. Only upon submission of the official offer publicity is demanded by law. This is due to the fact that the opinion of the relevant BoD and the comments of the employees will be based on the documentation provided to them.

In the case of an M&A procedure involving non-listed companies, approval of the General Assembly is required and therefore the shareholders have the relevant information, which can obtained through the publications required by the law.

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

The BoD of the target has the right to deal with alternative proposals and, in any case, it is entitled to reject the offer by issuing an unfavourable opinion.

8.3 Is it a fair fight?

The fight is considered to be fair. The need for publicity of all relevant documentation, the requirement of a justified opinion issued by the relevant authorities, the publicly available financial statements and the obligation of always acting in the benefit of the company contribute greatly in the fairness of the fight.

9 Other Useful Facts

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

There are various factors that can influence the success of an acquisition. The size of the companies, the relationship established with their relevant unions of employees and the power that those unions have upon the decision-making process, along with the quality of the information provided by both sides are of relevance.

9.2 What happens if it fails?

When a public takeover fails, the bidder has the choice to submit a new offer. In case he already possesses shares of the target company, the bidder is entitled to take part in a possible increase of the share capital of the target company and, in any case, the bidder can also exit the target company.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in Greece.

There are no recent amendments or new legislation regarding the M&A procedures in Greece.

With regard to major transactions, there has been recently activity in the banking sector, since it is expected that the proposed acquisition of Emporiki Bank by Alpha Bank will be completed, as well as the acquisition of EFG by the National Bank of Greece, which follow another completed deal, i.e. the acquisition of sole control of GENIKI Bank by Piraeus Bank.

Acknowledgment

The authors would like to acknowledge Vicky Pantos for her research assistance.

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- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining
- Oil & Gas Regulation
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Private Client
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping
- Telecoms, Media & Internet
- Trade Marks

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