The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Greece: Mergers & Acquisitions

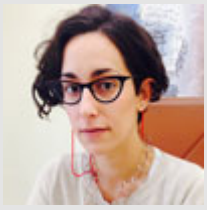
This country-specific Q&A gives an overview of mergers and acquisition law, the transaction environment and process as well as any special situations that may occur in Greece.

It also covers market sectors, regulatory authorities, due diligence, deal protection, public disclosure, governing law, director duties and key influencing factors influencing M&A activity over the next two years.

This Q&A is part of the global guide to Mergers & Acquisitions. For a full list of jurisdictional Mergers & Acquisitions Q&As visit http://www.inhouselawyer.co.uk/index.php/practice-areas/mergers-acquisitions/


**Country Author: Rokas Law Firm**

The Legal 500



**Chloe Iordanidou, Associate**

**c.iordanidou@rokas.com**


1. **What are the key rules/laws relevant to M&A and who are the key regulatory authorities?**

   Provisions affecting mergers and acquisitions are spread in an impressive number of laws. The basic legal framework is included in the corporate codified Law 2190/1920 having an entire chapter dedicated to mergers, reverse mergers and transformations of Greek societés anonymes (SAs). Law 3777/2009 implementing the cross-border merger Directive 2005/56/EC is relevant, while Law 3461/2006 transposing Directive 2004/25/EC and Law 3556/2007 transposing the Transparency Directive 2004/109/EC in relation to information obligations in case of the acquisition of significant holdings in listed companies also apply to listed companies, along with Law 4443/2016 on market abuse. Further laws regulating special types of companies also contain specific M&A provisions,

such as Law 4072/2012 on private limited companies (PCs), Law 3190/1955 on limited liability companies (Ltds) and Law 2515/1997 on mergers between credit institutions.

Law 3959/2011 regulates competition law aspects related to concentrations and applies in conjunction with the EC Merger Regulation 139/2004. The laws offering tax neutrality to transactions are of significant importance, as they have facilitated numerous M&As and corporate transformations in Greece. Tax incentives are principally provided by Legislative Decree 1297/1972, Law 2166/1993 and Law 4172/2013 (the Income Tax Code).

Greece does not have a specialised M&A market regulator. Specific issues regarding takeover bids are regulated by the Hellenic Capital Market Commission (HCMC), while concentration matters are dealt by the Hellenic Competition Commission. For transactions in regulated market areas, such as financial institutions including insurance companies, or licensed entities as, e.g. in the energy sector, the sector-specific authorities are also in charge.

## 2. What is the current state of the market?

Following a long period of economic recession and a number of financial stabilisation programmes, Greece’s business climate for M&As seems to be on the upraise. The main source for transactions is the Hellenic Reconstruction and Development Fund (HRADF), which is responsible for the divestiture of the public stake in several of the most prominent corporate organisations in Greece in a rigid privatisation programme involving the Hellenic Petroleum, the electricity incumbent PPC, the gas transmission operator DESFA, the natural gas supply corporation DEPA,the Hellenic Post corporation ELTA, the telecommunications company OTE and others.

The reported number of transactions concluded in the first half of 2017 has doubled comparing to the same period in 2016 (21 transactions in H1 2017 compared to 10 transactions in H1 2016). The total H1 2017 transaction value has also risen (1.21 US$b compared to 0.23 US$b in H1 2016). The great majority of such transactions (57%) was inbound.

## 3. Which market sectors have been particularly active recently?

Over the last years the energy, hotel, food, fish, cosmetics, metallurgy, IT, telecoms, insurance and retail sectors have been active. One of the most important transactions of the last two years is the ownership unbundling of the Hellenic Electricity Transmission Operator (ADMIE) in a triple transaction where PPC sold 24% to the Chinese grid company State Grid, 25% to a publicly owned SPV and transferred 51% to its own shareholders through a capital reduction via the Athens Stock Exchange.

A further major transaction still pending is the sale of 67% of the Thessaloniki Port Authority shares to the joint venture of Deutsche Invest Equity Partners GmbH, with its subsidiaries CMA CGM Terminal Link SAS and Belterra Investments LTD having committed to invest 180m euros in the port of Thessaloniki. A part of the Pireaus port had preceded with the Chinese Cosco acquiring 67% of the Piraeus Port Corporation's share capital.

Other major transactions completed over 2016-2017 include the acquisition by Sklavenitis (the company owning the largest chain of Greek supermarkets) of the insolvent Marinopoulos SA supermarkets, through an agreement for the restructuring of the latter; a large insurance sector merger with ERGO Hellas absorbing the formerly state owned ATE, and the acquisition of the Greek company Taxibeat by the German Daimler-Benz group.

## 4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

According to the agreement between Greece and its creditors, and subject to the financial status of the country by that time, Greece is expected to conclude the program assessment having put in place a number of drastic measures to become more competitive, and will most likely exit the financial restructuring programs in August 2018. Such exit could result in the stabilization of the country's economy and thus to more business confidence and more investments, which would in turn generate greater M&A activity. Taking into account the growing rate of transactions in the first half of 2017, it could be argued that signs of such confidence have already made their appearance.

Also, through a rigid electronic foreclosure programme, banks are expected to reduce their exposure to non-performing loans and direct liquidity into the market.

Finally, Directive 2017/828 on the encouragement of long-term shareholder engagement, published in May 2017, can also have a positive impact on M&A activity in Greece. The directive requires Member States to ensure that companies have the right to identify their shareholders, thus facilitating the exercise of shareholders' rights both domestically and in other Member States and potentially resulting in more inbound and domestic investments.

## 5. What are the key means of effecting the acquisition of a publicly traded company?

Stocks of publicly traded companies are acquired freely, unless the potential acquirer initiates a takeover bid, thus triggering the application of Law 3461/2006. Said law enables potential buyers of publicly traded companies to issue bids on a voluntary or mandatory basis to acquire stocks of Greek publicly traded companies.

Under a voluntary bid, the buyer must acquire all offered stocks, unless it has designated a maximum acceptable amount of stocks. A public bid is mandatory for any person acquiring stocks representing voting rights in excess of 1/3 of the total voting rights, as well as for any person holding more than 1/3 but less than ½ of the total voting rights and subsequently acquiring stocks that represent more than 3% of the voting rights of the target company within six months.

Any public bid must be notified to the HCMC immediately after the decision to launch such a bid is taken, and prior to any other public announcement, together with a draft information document.

## 6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

All Greek companies are registered in the General Commercial Registry of the Ministry of Commerce (GEMI). Both financial and legal corporate information is publicly available,

including its corporate structure and its annual financial reports.

Furthermore, information on potential target companies may be acquired from its annual financial statements, its articles of association, the annual reports of its BoD, reports filed with supervisory and regulatory authorities (if the company is under supervision or a special regulation regime), from market and sector reports, data and statements published on the target's website, as well as from past reports issued by the target company in the event of listings, placements etc. The Cadastre and the local Land Registries keep the real estate ownership records, while undertakings operating in regulated markets are registered in the sector specific registers.

The amount of the diligence related information that shall be disclosed to a potential acquirer depends on the transaction intentions and specific and to the extent of liability the seller is prepared to take. According to the Greek Civil Code, during the stage of negotiations relating to any type of transaction, the parties are obliged to act in good faith, and are thus prohibited to provide incomplete or misleading information.

## 7. To what level of detail is due diligence customarily undertaken?

A typical buyer will arrange for legal, accounting and tax due diligence exercises before deciding on an acquisition, depending on the acquirer’s risk profile. When financial and legal due diligence is undertaken, the acquirer may have access to the financial and legal books and records of the company, including tax books and records, corporate information not limited to corporate governance, copies of key client contracts (sometimes redacted), commercial contracts, financial contracts, assets and real estate property, pending or threatened litigation, environmental licences, intellectual property, insurance and internal auditors’ reports, et.al.

The scope of the research is usually limited at the first stage, whereby the potential acquirer receives information by reviewing published data related to the target company. In the following stage, a more detailed due diligence review may be allowed for those acquirers which have submitted an offer. Finally, the preferred acquirer may be granted the opportunity to perform an update due diligence before signing the transaction agreements.

Target’s due diligence reports are prepared in a number of deals. On the other hand,

should little or no prior due diligence occur, then detailed protection clauses are negotiated and incorporated in the transaction documents, such as changes in the price or penalty clauses.

## 8. What are the key decision-making organs of a target company and what approval rights do shareholders have?

The key decision-making organs of SAs are the Board of Directors (BoD) and the General Assembly (GA). The BoD represents the company and decides about any type of action relating to the management of the company, the handling of its assets and the implementation of its goals. The GA is exclusively competent for issues such as to amend the company's articles, elect the BoD, distribute profit, increase or reduce the share capital, and to initiate a merger, division, modification, revival, extension or resolution of the company. Each share category decides separately too. Approval/first refusal/veto rights may be contained in the articles of the company.

## 9. What are the duties of the directors and controlling shareholders of a target company?

Directors must manage the affairs of the company lawfully and in line with their duty of care, without abusing any of their rights. They must also refrain from any action that could impinge upon the interests of the company and cannot engage in activities that relate to the company's goals for their own interests, nor acquire stakes at competing partnerships.

Directors of listed companies are required to pursue the long-term value and the general interest of the company, and they must allow shareholders to evaluate the public bid. They are prohibited to pursue their own interests, if such are not aligned with the company's interests. More specifically, the BoD of a target listed company is only entitled to seek alternative bids. It is prohibited to act in any way that could result in the public bid being withdrawn or cancelled, if the consensus of the GA has not been obtained first.

Directors and Shareholders of a listed company must neither use qualified information related to the company, in order to acquire or dispose of shares, if the value of the illegal tradings exceeds a certain limit, nor recommend the acquisition or disposal of shares or

the amendment or cancellation of an order relating to shares or publish qualified information.

## 10. Do employees/other stakeholders have any specific approval, consultation or other rights?

The Greek company law has not endorsed the two tier system. However the employments laws provide, that employees of private companies that employ more than 50 or 20 persons, as the case may be, have the right to be informed prior to the transfer of the company about the date of the transfer, its background, eventual financial, legal and social consequences, as well as the planned actions that relate to employees; equally, they are entitled to information by the acquirer in a timely fashion.

The opinion of the BoD in relation to the bid must be distributed to the employees' representatives, who subsequently may submit and annex their reply. Similarly, a right to be informed exists in relation to the outcome of the takeover bid. If the administration of the transferred company intends to take action relating to the status of the employees, the latter have the right to participate in consultations with the managers of the company, in order to reach an agreement.

The creditors of a merging SA are entitled to financial guarantees if the financial status of the merging companies renders such guarantees necessary. Furthermore, creditors owning convertible bonds in at least one of the merging companies have a specific approval right over the merger. Equally, creditors of merging PCs can object to the merger or request to be granted sufficient securities.

## 11. To what degree is conditionality an accepted market feature on acquisitions?

Shares are transferred pursuant to the general Civil Code provisions on tangible moveable objects. As such, their transfer and acquisition can be made subject to certain conditions; in that case, their destruction or deterioration prior to the fulfilment of the conditions is at the transferor's risk. By contrast, public takeover bids for listed companies cannot be made conditional upon any type of prerequisites other than those which are included in the information document and relate to regulatory licensing / approval or to the issuing of new shares that will be provided as consideration.

## 12. What steps can an acquirer of a target company take to secure deal exclusivity?

It is not unusual that preliminary agreements are concluded at the start of the negotiations, which contain an exclusivity clause next to a confidentiality undertaking.

## 13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Common deal protection mechanisms include letters of credit, letters of guarantee, or escrow accounts for gradual payment of the price, which serve as a guarantee for the protection of transactions and especially for the payment of the purchase price. Break-up fees are not common but are enforceable in principle; the contractual structure for the legal basis of break-up fees is critical for their enforceability. Limitations based on general principles of law (e.g., fault or the abusive exercise of rights) will apply. Furthermore, in order to mitigate the risk of not receiving the necessary approvals for the transaction, the parties often define the granting of the relevant approvals as a condition precedent for closing. Each party carries its own transaction costs through the performance and until the closing of an M&A deal.

## 14. Which forms of consideration are most commonly used?

Any type of consideration can be provided for shares in private companies, while the most common form chosen is cash (in the form of bank transfers). As far as listed companies are concerned, the acquirer may offer securities, shares, cash, or a combination of the two. In relation to mandatory takeover bids, shareholders of a target company can opt for a cash-for-shares consideration.

## 15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

There are no public disclosure requirements in the case of the acquisition of shares in private companies.

Any person submitting a public bid (whether voluntary or mandatory) must inform both

the HCMC and the target's BoD in writing before any public announcement. A person acquiring or disposing shares in a listed company to which voting rights are attached must notify the issuer and the HCMC if such proportion reaches or exceeds the thresholds of 5%, 10%, 15%, 20%, 25%, 33.3%, 50% or 66.6%. The same obligation applies to certain cases of acquisition, disposal and exercise of major proportions of voting rights, as well as to the acquisition or disposal of financial instruments.

## 16. At what stage of negotiation is public disclosure required or customary?

Apart from the general provisions on the obligation to notify the competent authorities, there is no requirement to disclose the negotiation of a potential acquisition of a private company.

Persons involved in a takeover of a listed company are only allowed to disclose confidential information if such disclosure can be considered appropriate under their respective duty of care. Confidential information is defined as including any unpublished information of a precise nature relating to one or more issuers and financial means and which could potentially affect the price of such means. Similarly, such disclosure needs to be precise and true, or else it can result in market distortion and imposition of criminal and administrative charges.

## 17. Is there any maximum time period for negotiations or due diligence?

No maximum time period for negotiations or due diligence between interested parties is provided for in relation to private companies. Parties should however refrain from unjustifiably prolonging negotiations, pursuant to the general good faith obligation imposed by the Greek Civil Code. A time limit can be agreed inter partes, after the expiration of which negotiations are either deemed as failed or can be renewed.

In case of listed companies, the acceptance of bid must take place within 4 to 8 weeks from the date that the offer document was published.

## Are there any circumstances where a minimum price may be set for the shares in a target company?

In relation to a mandatory bid initiated for a listed company, the acquirer is obliged to offer a fair consideration in cash, which should be neither less than the average market value of the shares during the six (6) months prior to the bid, nor than the maximum price at which the acquirer had purchased shares during the twelve month period prior to the bid.

## 19. Is it possible for target companies to provide financial assistance?

SAs are prohibited to advance money, issue loans and grant guarantees to potential acquirers of their shares, unless such transactions are completed under the responsibility of the BoD in usual commercial terms, approved in advance by the GA with an increased quorum and majority, and the financial assistance granted does not result in equity being lower than a specific threshold. The same applies for financial assistance provided by subsidiary companies to third parties aiming to acquire shares of the parent company. However, transactions conducted by credit or financial institutions in the ordinary course of business are excluded from this rule.

## 20. Which governing law is customarily used on acquisitions?

However, rights in rem over Greek assets are governed by the law of the situs of the asset. The law of the share purchase agreement may be agreed by the parties subject to eventual choice of law restrictions.

## 21. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

A person planning to launch or required to submit a bid must notify the bid to the HCMC and to the target's BoD, and then proceed to a public announcement, which must among others enlist the corporate name and registered office of the offeree company, the name and address of the offeror or, in case of a legal entity, the corporate name, the legal status, the registered office and address the corporate name and address of the offeror's

 advisor.

Within three days after its approval by the HCMC, the information document has to be posted by the offeror at the target's registered and branch offices, at the consultant's office and at the credit institutions or investment firms authorized by the offeror. It also must be published in the offeror's website, as well as on the site of its consultant.

If the offeror decides to improve the terms of the bid, the revised offer must be submitted for approval to the HCMC, communicated to the BoD of the target company and published by the offeror at the Stock Market's website, at the daily price report of the Stock Market and at the offeror's website. Finally, the results of the bid have to be made public by the offeror within two days after the expiration of the time period of acceptance, and they have to be communicated to the representatives of the employees.

## 22. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

Listed shares are transferred via the Stock Exchange Depositary. Non-listed bearer shares are transferred with minimum formalities, notably by the conclusion of an agreement and the delivery of the physical share title. If the titles are electronic and not physical, specific registrations must be made in the electronic register of the company and must be signed by the contracting parties and the company. With respect to registered shares, the parties must register the transfer in the shareholders' ledger and sign it, as otherwise the transfer will only be valid and binding between the parties but not vis a vis the company. Physical registered shares are physically transferred and endorsed in writing at the back of the title.

## 23. Are hostile acquisitions a common feature?

Hostile takeovers are not common in Greece. Such a takeover has been unsuccessfully attempted only recently for the shares of the hospital group Hygeia by the competitor hospital group Iatriko Kentro.

## 24. What protections do directors of a target company have against a hostile approach?

Defense mechanisms prior to the submission of a public bid are legally possible and

certain can rely on the company's articles. Such defenses would include calling upon callable shares, or converting bonds to shares or preferred shares to common voting shares, or relying on an employee call option program to change shareholders control; or agreeing large bonuses in favor of directors to be received in case of a takeover. This makes the acquisition more expensive, and less appealing to the acquiring company.

However, after a takeover bid has been submitted, the directors are bound by their fiduciary duty and can only take defense measures already approved by the GA. The Law endorses the principles of Directive 2004/25 in accepting the prevalence of the shareholders vis a vis the BoD in cases of takeover bids. To be noted that any share transfer or voting restrictions in the articles and in eventual shareholders agreements are deactivated during the period of acceptance. Apart from that, the BoD shall draft a public document setting out its justified opinion on the bid, which is submitted to the HCMC and distributed to the shareholders along with an underlying financial advisors' report.

## 25. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

Please see section 5.

## 26. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

Law 2190/1920 vests minority shareholders with many specific rights. As far as M&As are concerned, persons retaining a shareholding of 2% of the share capital may apply to Court and request that a faulty General Assembly decision be withdrawn. Minority shareholders of a company taken over by a majority shareholder that maintains 95% of the share capital can effect a forced acquisition of their shares by the majority shareholder. One or more minority shareholders are able to request that their shares are taken over by the company following a resolution on the transfer of the company's seat.

Shareholders of publicly traded companies that after a takeover bid are controlled by a majority shareholder holding more than 90% of the share capital have the right have their shares bought by the majority shareholder at a price equal to that contained in the takeover bid.

## 27. Is a mechanism available to compulsorily acquire minority stakes?

Under Law 2190/1920, a majority shareholder that maintains 95% or more of the company’s capital has the right to enable the acquisition of the remaining share capital. A squeeze-out right is available to majority shareholders that, following a takeover bid, hold 90% or more in a listed company, for a consideration equal to the one contained in the takeover bid.