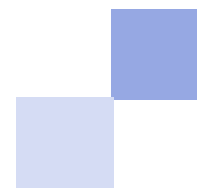


# Greece

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## MARKET AND REGULATION

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

In 2005, private equity funds were the basis for many of the most important acquisitions of Greek companies. Major deals include:

- TIM Hellas, a mobile telecommunications company, which was de-listed from the Amsterdam Stock Exchange, squeezed-out its minority shareholders through a cash-out merger and subsequently bought Q-telecom, another mobile telecommunications company, through private equity funds.
- The purchase of Hyatt Regency, a listed casino and hotel operator, which is now in the process of a mandatory tender offer, through private equity funds.
- Aramco exited from its investment in Motor Oil, the second biggest oil refinery of the country, and the control passed exclusively to its Greek controlling shareholders and founders.
- Nestle agreed to buy the ice cream business of Delta Holdings.

Greek companies, and most notably banks, have been eager to make foreign acquisitions, focusing on south east Europe. The National Bank of Greece, Alpha Bank, EFG Eurobank and Piraeus bank are competing, along with foreign financial institutions, for the acquisition of banking and brokerage institutions in the wider region either from governments or controlling shareholders. Most notably, the National Bank of Greece has agreed to acquire a controlling stake in the Turkish Finansbank, Alpha Bank acquired the first Serbian bank to be privatised and Piraeus bank has acquired a bank in Egypt.

Merger activity remained exclusively within Greece, and the most important transaction announced was the merger between Delta group and Chipita, which will create the largest Greek food company, with operations in over 29 countries.

The public offer market was quite slow. During the 12 months ending April 2006, Intracom tried to gain control over Forthnet, a fixed line telecommunications company, through a failed hostile public offer. In addition, two mandatory public offers were launched, one for Imperio, a forwarding company, and one for Hyatt Regency, which aimed at its de-listing.

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

The main means of obtaining control of a public company is through an agreement with its controlling shareholders. Public offers, where the bidder proposes to acquire the shares of the target from its shareholders, are much less frequently used.

Control can be also gained through a merger. Through this process, all assets and liabilities of the absorbed company are transferred to the absorbing company, in exchange for shares, cash or a combination of both, which is received by the absorbed company's shareholders. Since the merger requires an enhanced quorum and a majority decision of the shareholders' assembly in each of the companies involved, mergers, in practice, require an arrangement between the controlling shareholders of the companies and are not the most common means of obtaining control over a company.

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

Hostile bids are allowed but they are not common. Most Greek public companies are controlled by a small number of persons, usually members of the same family. Consequently, the free float of Greek public companies is very low compared to the free float of public companies of Anglo-Saxon capital markets.

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

#### Takeovers

Decision No. 2/258/5.12.2002 (Takeover Decision) of the Hellenic Capital Market Commission (HCMC) (*see box, The regulatory authority*) is currently the only relevant legislation. This decision implements an early 2001 draft of what became the Directive 2004/25/EC on takeover bids (Takeover Directive).

In early April 2006, a draft law (Draft Law) fully implementing the Takeover Directive was submitted to Parliament and its enactment is expected within the next few months.

The HCMC, being the main regulator of public offers, reviews and approves the tender prospectus and enforces the law by supervising the overall procedure and imposing fines and penalties.

## Mergers

The main relevant laws and regulations are:

- Codified Law 2190/1920 on Greek *societes anonyms* (Greek Company Law), which provides the basic corporate framework and actions.
- Tax incentive laws 2166/1993, or, very rarely for public companies, 1297/1972 (as in force), which allow mergers to take place without tax frictions.
- Law 3401/2005, implementing Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive), which regulates the issuance of a prospectus for placing and/or listing the new shares.
- The Athens Exchange Regulation which, provides the procedural requirements for the listing of the new shares and, perhaps most importantly, requires that a valuation of the merging companies is presented before the shareholders' assemblies that will decide on the merger.

The Ministry of Development approves the merger from a corporate law perspective, the HCMC approves the prospectus for the listing of the new shares and the Athens Exchange (ATHEX) approves the listing of the new shares.

## PRE-BID

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

Due diligence usually varies depending on whether the bid is recommended or hostile.

#### Recommended bid

In a recommended bid, the bidder has usually reached an agreement with the target's controlling shareholders/managers and has had access to relevant information for the purposes of the due diligence and/or valuation. If the bidder has received price-sensitive information, it must comply with the insider dealing and market abuse provisions of Law 3340/2005 (implementing the market abuse Directive 2003/6/EC on insider dealing and market manipulation (market abuse) (Market Abuse Directive)). In addition, and in order to gain access to the target's information, the bidder is usually required to sign confidentiality and, occasionally, standstill agreements.

#### Hostile bid

For a hostile bid, due diligence is usually limited to reviewing publicly available information.

#### Public domain

A listed company is required to publish the following information:

- The articles of association and related documents. These set out share capital structure, voting rights and so on. It is highly unlikely that defensive measures will be included in the corporate documents of a listed company (see *Question 22*).
- Details of the members of the board of directors and managers.
- Published accounts and the related directors' reports for every calendar quarter, which since 2005, have to be compiled in accordance with International Financial Reporting Standards. The half yearly and yearly published accounts must be audited.
- Any published prospectus.
- Annual reports, issued since 2001 and before the annual shareholders' meeting.
- Filings or announcements to the ATHEX disclosing significant information or replying to questions of the supervising authorities. For example, major new developments, including significant acquisitions, disposals, and so on.
- The controlling shareholders, that is, the persons controlling, directly or indirectly, more than 5% of the voting rights of the target (see *Question 8*).
- Trades in the company's shares effected by the board of directors, other managers and their related parties.

All the above information, apart from the standard corporate documents, can be obtained from the website of the ATHEX or of the company for a period of at least two years from initial publication.

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

The bidder is not allowed to make any public announcements before launching the bid. Apart from this, there are no other rules obliging a bidder to maintain secrecy. However, any bid disclosure prior to its official announcement can be scrutinised under the market abuse regulations and can have an adverse impact on the bid's success, particularly if it results in a sharp price increase.

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

Given that control of Greek public companies rests with a limited number of persons, it is common to have memoranda of understanding or even share purchase agreements executed before the tender is announced. It is also usual to have the controlling shareholders transferring the controlling block of shares to the bidder before the tender offer, triggering a mandatory tender offer obligation.

The terms of such agreements are freely determined by the parties, however, if there are such agreements, the bidder must disclose the main terms in the tender prospectus and, if members of the target board of directors finalise these agreements, they must also be included in the target board's opinion-reply to the tender.

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

Apart from the obligation to disclose changes in significant voting rights percentages (*see below*) there are no specific restrictions on acquiring a stake in a target company. However, the bidder may need to consider market abuse restrictions and whether these acquisitions will create the obligation of a mandatory tender offer or increase the minimum offered price (*see Question 17*).

**Notification of trades in a public company**

Any person must notify the public company and the HCMC if its voting rights cross over or below the thresholds of 5%, 10%, 20%, 33.3%, 50% and 66.6%. All such thresholds, with the exception of 20%, represent different shareholder/control rights according to Greek Company Law.

Additionally, if a shareholder holds voting rights in excess of 10% (or if the shareholder is a member of the board irrespective of the holding), it is obligated to notify any change (increase or decrease) in its voting rights of more than 3%. If the company has been listed within the previous 12 months, the voting rights change is reduced to 1.5%.

For the purposes of determining whether a person is required to make a notification, Articles 7 and 8 of Directive 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of (Major Holdings Directive), apply and the following are regarded as voting rights held by that person (including legal entities):

- Voting rights held by persons other than in their own names, but on behalf of that person.

- Voting rights held by an undertaking controlled by that person.
- Voting rights held by a third party with whom that person has concluded a written agreement, which obliges them to adopt, by exercising the voting rights they hold, a lasting common policy towards the management of the company in question.
- Voting rights held by a third party under a written agreement concluded with that person, or with an undertaking controlled by that person, providing for the temporary transfer for consideration of the voting rights in question.
- Voting rights attaching to shares owned by that person, which are lodged as security, except where the person holding the security controls the voting rights and declares his intention of exercising them, in which case they are regarded as the latter's voting rights.
- Voting rights attaching to shares of which that person has the life interest.
- Voting rights which that person (or one of any of the persons mentioned above) is entitled to acquire, on his own initiative, under a formal agreement. In these cases, the notification is effected on the date of the agreement.
- Voting rights vested in shares deposited with that person, which that person can exercise at its discretion in the absence of specific instructions from the holders.

A "controlled undertaking" is any undertaking in which a person (including legal entities):

- Has a majority of the shareholders' or members' voting rights.
- Has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question.
- Is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights under an agreement entered into with other shareholders or members of the undertaking.

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

The person involved must notify the HCMC and the public company in writing of its current holding and whether such holding is direct or indirect, within the next working day from the change in its shareholding. The HCMC then publishes the notification on the ATHEX Daily Bulletin within five days.

### Mandatory tender offer

The relevant laws impose the obligation to announce a mandatory tender offer once a person has acquired a certain percentage of voting rights in a public company (currently, 50% under the Takeover Decision and 33.3% according to the Draft Law). The relevant laws, however, do not aggregate voting rights percentages in exactly the same way as Articles 7 and 8 of the Major Holdings Directive for notification purposes (see *Questions 13 and 15*).

### Market abuse

If the interested bidder has had access to inside information, it will be restricted from purchasing shares in the market. In addition, and unlike other countries, there is no specific safe harbour under which a bidder can proceed to purchase target shares prior to the bid. By applying the general market abuse principles, the bidder must be acquiring the shares with the sole and real intention of proceeding with the tender offer. Such acquisitions can, however, increase the minimum share price under which a mandatory tender offer may be conducted (see *Question 17*).

#### 9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement?

Formal agreements between the bidder and the target are very uncommon, given that the bidder usually owns a controlling shareholding in the target before the tender offer and the tender offer is then mandatory. Most issues between the bidder and the target's management are negotiated before the tender offer between the bidder and the target's controlling shareholders.

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

A break fee has never been disclosed in a tender offer. Moreover, it is highly likely that a break fee agreement (or clause) will be ruled void or unenforceable given that the Greek Company Law invalidates any guarantees or loans granted to third parties for the purpose of acquiring the company's shares. Also, such an action can be seen as a prohibited defensive measure by the target (see *Question 22*).

However, voluntary tender offers can be withdrawn and there are no provisions for this similar to those for break fees. In particular:

- The bidder can withdraw the tender offer provided that other competitive offers are submitted. The withdrawal must be announced within three working days following the approval date of the prospectus of the competitive offers by the HCMC.

- The tender offer can also be withdrawn, when unexpected events, independent from the bidder, occur that make the terms and conditions of the tender offer no longer feasible. However, such withdrawal needs the HCMC's approval.

The withdrawal of the tender offer is announced in the newspapers and the ATHEX Daily Price Bulletin.

The Draft Law does not make any changes in the existing framework on withdrawals.

#### 11. Is committed funding required before announcing an offer?

When announcing an offer, the bidder must have confirmation by a credit institution established within the EU that it can satisfy in full the consideration offered for the tendered shares. This is included in the draft tender prospectus that is submitted to the HCMC and in the approved tender prospectus that is published.

If the consideration is partly or wholly exchangeable securities, the bidder must receive confirmation by a credit institution, acting as custodian, that the bidder possesses the necessary transferable securities, or, as the case may be, that the bidder has taken all necessary measures to make possible the payment of the consideration that consists of transferable securities.

According to the Draft Law, the bidder announces the tender offer only under the condition that it is certain that the bidder is able to pay in full the consideration offered (for the form of consideration, see *Question 17*).

### ANNOUNCING AND MAKING THE OFFER

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

Both recommended and hostile bids require the same procedure.

The bidder must notify the HCMC and the target's board of directors as soon as the decision for the submission of a tender offer is taken, or, for a mandatory tender offer, within 30 days after the bidder has acquired control of the target. In the Draft Law, the 30-day period is reduced to a 30-day period.

On the next working day after the HCMC and the target's board of directors is notified, the bidder must publicly announce the tender offer and the announcement must include the following information:

- The name and registered seat of the target company.
- The name and address of the bidder or, when the bidder is a legal entity, the legal status, name, address and the entity's representative.

KEY DATES IN THE TIMETABLE (VOLUNTARY AND MANDATORY)		
Days (in most cases working days)	Action	Changes under the Draft Law
Day 0	Decision of the bidder in voluntary offers.  Expiration of 30-day period from acquiring control in mandatory offers.	Expiration of 20-day period from acquiring control in mandatory offers.
Day 1	Notification of the tender and submission of the draft tender prospectus to the board of the target and the HCMC.	
Day 2	Public announcement of the tender offer.	
Day 12	Approval by the HCMC of the tender prospectus.  If the HCMC has comments, the ten day deadline is extended accordingly.	
Day 15	Publication of the approved prospectus.	
Day 18	Start of acceptance period.	The acceptance period starts on the publication of the approved prospectus.
Day 25	Publication of the target boards' justified opinion on the tender offer.	
Day 78	End of acceptance period.  (The acceptance period may be extended for ten more days if the bidder so requests and the HCMC approves.)	The acceptance period cannot be longer than eight weeks.  (The acceptance period may be extended for two weeks days if the bidder so requests and the HCMC approves.)
Day 80	Publication of the results of the tender offer.	

- The name and address of the bidder's adviser.
- The shares constituting the object of the tender offer.
- The maximum number of shares the bidder is committing to or obliged to acquire, the corresponding percentage of such shares in the total number of shares of the target company, as well as in the total number of shares of the same class.
- The consideration offered for each share tendered.
- The minimum number of shares that have to be accepted in order for the tender offer to be valid (in case of a voluntary tender offer).
- The number of shares of the target company already under control, directly or indirectly, by the bidder.

Under the Draft Law, the bidder must include in the announcement its intention, if any, to acquire shares of the target company, through means other than the tender offer, within the period from the announcement of the offer and until the end of the acceptance period.

#### Timetable of a tender offer (both voluntary and mandatory)

See table, *Key dates in the timetable (voluntary and mandatory)*. The days indicated in the table are the maximum allowed deadlines.

#### Variations to the timetable

**Competing offer.** Competing tender offers can be submitted not later than seven working days prior to the end of the acceptance period and, in any case, within 40 days following the start of the initial tender offer's acceptance period (according to the Draft Law, the 40-day period is repealed). The HCMC must approve the competing prospectus within three to four working days from its submission. The acceptance period of the initial tender offer, provided that it is not withdrawn, is automatically extended to the termination date of the competitive tender offer's acceptance period.

**Revised offer.** Any bidder can, within five working days prior to the termination date of the acceptance period, revise one or more of the terms and conditions of its tender offer, provided that the revised terms are more favourable to the target's shareholders.

The revised tender offer follows the same notification procedure as the original offer. The HCMC must approve it within two working days following the submission date of the revised tender offer. The target of the initial tender offer is then considered to accept the revised tender offer, unless stated otherwise in their acceptance document. The submission of a revised tender offer does not extend the acceptance period.

**Publications.** All announcements concerning the tender offer are published on the official ATHEX website, its Daily Bulletin and the website of the person making the announcement. All announcements are notified to the HCMC.

Exceptionally, the tender prospectus must also be made available in a printed form and posted on the website of the adviser of the bidder.

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

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#### Voluntary tender offers

Where a voluntary tender offer is announced, the bidder must make a tender offer for the acquisition of at least 50% of the total number of the shares of the target (including those already under the bidder's control) (*Takeover Decision*). The bidder must define the minimum number of shares to be tendered in order for the tender offer to be valid. This cannot be less than 40% of the total number of the shares of the target, including those already owned by the bidder.

The bidder can also set the maximum number of shares it is committed to acquire.

According to the Draft Law, the minimum number of shares that the bidder must propose to acquire (currently 40%, including the shares owned) is repealed and there can be a voluntary tender offer for any number of shares of the target.

#### Mandatory tender offers

In a mandatory tender offer, the bidder is obliged to accept all shares tendered and does not have the right to determine a minimum number of shares to be tendered in order for the tender offer to be valid. Also, the bidder cannot withdraw its offer, even if competing offers are launched.

Both voluntary and mandatory offers cannot be subject to any conditions other than those concerning the provision of necessary administrative licences or approvals, including those needed for the issuance of any exchangeable securities offered as consideration. All conditions must be expressly stipulated in the tender prospectus.

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

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All documentation relevant to the tender offer is made public and there is no distinction between voluntary or mandatory offers.

#### Tender offer announcement

See *Question 12* for the content of the tender offer announcement.

#### Tender prospectus

The tender prospectus contains information on:

- The name and registered seat of the target company.
- The name and address of the bidder, or, when the bidder is a legal entity, its legal status, name, address and the entity's representative.
- The name, registered seat and address of the bidder's adviser.
- The persons responsible for the drafting of the tender prospectus and their relation to the bidder, as well as declarations by them that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its importance.
- The shares constituting the object of the tender offer.
- The maximum number of shares the bidder is proposing to, or must, acquire, their percentage in the total amount of share capital of the target company, as well as in the total number of shares of the same class.
- The shares or, as the case may be, the class or classes of shares of the target company under the control, directly or indirectly, of the bidder.
- The consideration offered for the acquisition of shares and the formula for the calculation of the price and method of payment.
- The minimum number of shares that has to be accepted in order for the tender offer to be valid (in the case of a voluntary tender offer).
- The number of shares of the target company already under control, directly or indirectly, by the bidder.
- Any guarantees the bidder's adviser is offering to the public.
- The confirmation by the credit institution that the bidder will pay the consideration (*see Question 11*).

- Any condition imposed by the HCMC for the completion of the tender offer.
- The bidder's business plan for the target company.
- Special agreements concerning the tender offer or the exercise of voting rights over the target shares, which apply directly or indirectly to the bidder.
- The minimum number of shares that have to be tendered for the tender offer to be valid, provided that it is not a mandatory tender offer.
- Any other conditions of the tender offer (*see Question 13*).
- Any trades on the target shares effected by the bidder (or persons acting in co-ordination) for the six-month period (12 months under the Draft Law) before the announcement of the tender offer, including the type of the transaction, the number of shares, the price and date.
- The opinion of the bidder's adviser regarding the methods and procedure for safeguarding the obligations undertaken by the bidder in relation to the target, as well as the adviser's opinion on the "credibility" of the tender offer.
- The start and end dates of the acceptance period.
- The procedure the target shareholders must follow in order to accept the offer, how the consideration is to be paid and the tendered shares transferred and any conditions to withdraw the acceptance.
- Special agreements, if any, concerning the tender offer or the exercise of rights in the target shares already under control, directly or indirectly, by the bidder.

When the consideration involves securities listed on a regulated market or of a member state of the EU, the tender prospectus must also make reference to the most recent prospectus published during the last three years prior to the tender and provide information on the issuer's shares and its published financial statements. In addition, the tender prospectus must make reference to any important event disclosed by the issuer during the last two years prior to the publication of the tender prospectus.

When the consideration also involves shares not listed on a regulated market, the tender prospectus must contain all information on those shares (equivalent to the information included in a prospectus published when securities are offered to the public or admitted to trading) necessary for the target to form an opinion on the assets, financial status and business prospects of the issuer of such securities.

Under the Draft Law, the bidder must also explicitly include in the tender prospectus, its intention, if any, to acquire shares of the target during the acceptance period outside of the tender offer process and a detailed reference to the bidder's shareholders and shareholdings of affiliated companies and subsidiaries.

### Opinion of the board of directors

The justified opinion on the tender offer by the target's board of directors is accompanied by a detailed report written by a financial advisor and must:

- Define the number of shares of the target company owned or controlled, directly or indirectly, by the members of the board of directors and management.
- Report the actions already taken or intended to be taken by the members of the board of directors in relation to the tender offer.
- Disclose any agreements between the board of directors of the target and the bidder, or the target's shareholders concerning the exercise of voting rights in the target company.
- Provide the target's board with an opinion on the estimated outcome of the tender offer in relation to the broad interests of the company and its employees along with its justifications of this.

The opinion must be submitted to the HCMC and the bidder within ten days following the approval of the tender prospectus.

In cases where the target's board of directors receives, prior to the publication of its opinion, a separate opinion from representatives of the employees of the target regarding the expected influence of the tender offer on employment, the board of directors must attach this opinion to its own opinion and publish it.

### Special provisions for the target's employees

The target's board of directors must, as soon as possible, distribute to the employee representatives the tender prospectus and any other published documents or information regarding a revised offer, a withdrawal and the final outcome of the tender offer.

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

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Any person acquiring securities of a listed company must submit a mandatory tender offer for all the remaining voting shares of the target is, as a result of such acquisitions, the percentage of the corresponding voting rights exceeds 50% of the target's total voting rights (*Takeover Decision*).

Under the current Draft Law, this limit is reduced to 33.3%. Also, the condition that the control threshold is exceeded as a result of acquisitions of the target's securities is lifted. In practice, this meant that if the voting rights were acquired as a result of the acquisition of a holding company, there was no obligation to launch a mandatory bid; the Draft Law attempts to rectify this.

Additionally, any person holding over 33.3% and less than 50% of total of the voting rights of the target company must launch a

mandatory tender offer, if such person acquires, directly or indirectly, 3% of the total of the voting rights of the target, within the previous twelve months.

### Aggregation of voting rights and holdings

In determining whether a bidder is required to make a mandatory offer, the following are regarded as voting rights acquired or owned by the bidder:

- The voting rights held by persons (individuals or legal entities) acting in concert with the bidder, (namely any person who co-operates with the bidder on the basis of an agreement, either express or implied, oral or written, aiming at acquiring control over the target company). In any case, a controlled undertaking (see *Question 8*) is treated as a person acting in concert with the bidder.
- All voting rights controlled by the bidder (or the persons described above) by virtue of agreement, pledge, usufruct (the right to use and enjoy the profits of something belonging to another as long as the property is not damaged or altered), custody or otherwise, under the condition that the person is able to freely exercise the voting rights in these securities.

### Exceptions from the obligation to launch a mandatory tender offer

According to the Draft Law, the obligation to announce a mandatory tender offer does not apply when a third party (other than the bidder or persons acting in concert with the bidder) holds a higher percentage of voting rights over the target or if the bidder exceeded the above thresholds by means of:

- A voluntary tender offer that was for 100% of the target shares.
- Inheritance or parental gift.
- Exercising its own rights of pre-emption in a share capital increase of the target. This, in practice, means that the remaining shareholders of the target did not participate pro rata in the share capital increase.
- A merger between affiliated companies (an unclear exception that will probably be amended).
- Privatisation of the target.
- The target's financial restructuring under article 44 of Law 1892/1990 (a voluntary arrangement between the target and its creditors).

Also, a person that has announced a mandatory tender offer and holds more than 33.3% of voting rights can freely acquire further voting rights for up to 50% of the target's total voting rights.

## CONSIDERATION

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

Since 2001 and until April 2006, the only form of consideration offered in tender offers has been cash.

In a mandatory offer, the consideration must always be cash (*Takeover Decision*). Additionally, if in a voluntary offer the securities offered are not listed, then the bidder must offer to the target's shareholders the option to demand the consideration in cash.

Under the Draft Law, the bidder in a mandatory offer can offer securities as well as cash, but the target's shareholders must have the option to demand the consideration in cash. However, the Draft Law does not fully regulate these issues.

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

In the case of a voluntary tender offer, there is no minimum consideration.

In the case of a mandatory tender offer, the offer price cannot be less than the highest from the following two prices:

- The weighted average market price (determined with a prescribed methodology) of the shares constituting the object of the mandatory tender offer during the period of twelve months before the submission of the tender offer.
- The highest market price at which the bidder or any of the persons acting in concert with the bidder, acquired, during the six-month period before the submission of the tender offer, any target shares.

The Draft Law uses the same methodology for determining the minimum consideration in mandatory offers. However, the six and 12-month periods are reversed, that is, the weighted average market price is calculated in the preceding six months and the highest market price at which the bidder acquired securities of the target in the preceding 12 months.

In addition, the Draft Law obliges the bidder to increase the price offered in a bid if it (or persons acting in concert with it) acquires during the tender, securities of the target at a price higher than the offered price. Finally, the Draft Law changes the methodology for calculating the weighted average price.

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

There are no additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders.



## POST-BID

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

Currently, a bidder cannot squeeze-out minority shareholders (*Takeover Decision*).

The Draft Law, however, provides for a squeeze-out right as well as a sell-out right:

- **Squeeze-out.** When the bidder acquires at least the 90% of the total of the voting rights of the target, it has the right to demand to acquire the rest of the securities of the target within three months following the end of the acceptance period, provided that the bidder discloses his intention to use the squeeze-out right in the tender prospectus. The consideration has to be in the same form and at least equal to the one offered during the tender and the minority shareholders can always demand a cash payment or (without delaying the squeeze-out procedure) apply to court for the determination of the fair exit price.
- **Sell-out.** When the bidder acquires 90% of the total of the voting rights of the target, it is obliged, within three months following the publication of the tender offer results, to purchase any securities of the target offered to it. The consideration has to be in cash and equal to the takeover price.

### 20. Are there any rules protecting the target from a further bid by the same bidder if the initial bid fails? If so, please give details.

In cases where the initial bid fails, either by cancellation or withdrawal, the same bidder, for the twelve months following the bid, cannot (*Takeover Decision*):

- Make another tender offer for the same target.
- Acquire securities of the target company that would result in an obligation to make a mandatory tender offer.

The HCMC can, on request, waive the above restrictions.

The Draft Law does not include any relevant prohibitions.

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

A company can apply to the HCMC for de-listing, provided that its shareholders' general assembly made the decision with a majority (not quorum) of 95% of the total voting rights outstanding of each class of shares to be de-listed.

The HCMC is not obliged to accept the petition and can set any additional terms and conditions for the de-listing of the company, either to the company itself or its shareholders. Usually, the HCMC imposes an obligation on the controlling shareholder to purchase any outstanding shares of the company at a certain price (that is, the tender offer price).

## TARGET'S RESPONSE

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

#### Pre-bid

The Takeover Decision does not provide for defensive measures.

The Draft Law provides that any decision (not yet implemented) of the target's board of directors, taken before the period starting from the notification of the tender and until the announcement of the results of the tender or its withdrawal, to adopt defensive measures against potential bidders must have the approval or the consent of the general assembly of the shareholders of the company.

#### Post-bid

After the announcement of the tender, the target company cannot enter into any transaction that would either substantially alter the target's net assets or take any action that could lead to the withdrawal of the tender offer (for example, an increase in the target company's share capital and issuance of convertible corporate securities), without obtaining the prior approval of the general meeting of shareholders (*Takeover Decision*). The target's board is, however, allowed to seek for alternative offers.

The Draft Law does not make any significant changes to the above. However, defensive measures taken by the target's board of directors, regardless of the time (pre-bid or post-bid) do not require the prior approval of the general assembly of the shareholders, if the bidder (or its holding company) is registered in a country that does not apply the same rule of prior approval by the general meeting (*Draft Law implementing Article 12, paragraph 3, Takeover Directive*).

The Draft Law also provides that the shareholders' meeting can decide that, during the acceptance period any restrictions on the transfer of securities or on voting rights included in the target's articles of association will not apply. The above decision requires a quorum and majority of two-thirds of the target's shareholders. In practice, these provisions will be used very rarely, since very few, if any, Greek public companies have such restrictions in their articles of association.

## TAX

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

Transferring shares due to a tender offer is effected over-the-counter. There are no transfer taxes imposed on the transaction, only Central Securities Depository fees at the aggregate level of 0.6%, which are usually, but not always, borne by the bidder.

## OTHER REGULATORY RESTRICTIONS

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

In cases not governed by Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (Merger Regulation), the prior approval of the HCMC has to be obtained for any concentration of undertakings when the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR150 million (about US\$182 million) and the aggregate Greek-wide turnover of each of at least two of the undertakings concerned is more than EUR15 million (about US\$18.2 million). A concentration falling within this criteria and which is believed to result in a substantial reduction of competition can be prohibited by the HCMC.

However, although prior approval by the HCMC may be required for the concentration, according to Greek competition law the bidder can proceed with the tender offer provided that it does not exercise its control over the target until the issuance of the relevant decision. Since the law does not provide for the unwinding of such transactions, this exception has never been used in practice.

In addition, if the combination is between regulated entities such as financial institutions, brokerage firms, insurance companies and so on, the consent of the supervising authority may, depending on the circumstances, be necessary.

In practice, the HCMC will not approve the tender prospectus until all necessary prior regulatory approvals have been granted to make the offer unconditional and binding on the bidder.

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

There are generally no restrictions on foreign ownership of shares.

## THE REGULATORY AUTHORITY

## Hellenic Capital Market Commission (HCMC)

**Head.** Alexios A Pilavios (Chairman)

**Address.** 1 Kolokotroni str. & Stadiou  
PO Box 105-62  
Athens  
**T** +30 210 3377 100  
**W** [www.hcmc.gr](http://www.hcmc.gr)

**Main area of responsibility.** The HCMC is the competent authority for the supervision of securities laws including tender offers.

**Obtaining information.** See website above.

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

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

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

## Disclosure requirements

Following the publication of the tender offer and until the termination of the acceptance period:

- The bidder and persons holding at least 5% of the voting rights, the members of the target Board of directors or the board of a company whose securities are offered as consideration, must disclose to the HCMC and to the public, the acquisition, whether through the regulated market or over-the-counter, of securities of the target company or the company whose securities are offered as consideration, as well as the acquisition price. This obligation applies to the above persons, other natural persons and legal entities acting in their own name but on behalf of those persons, companies being controlled by them as well as any other person acting in concert with them.
- Any person holding at least 0.5% of the voting rights of the target company or the bidder or other company whose securities are offered as consideration, must disclose to the HCMC and the public, both this acquisition and any other future acquisition of securities of the target company, the bidder or of the company whose securities are offered as consideration. This also applies to acquisitions by the same person (or entity) and other natural persons and legal enti-

ties acting in their own name but on behalf of the person's account, companies controlled by the person, or other person acting in concert with the person. Disclosure must be made of the acquisition price as well as the voting rights of the company under consideration, which the person might already own.

### Restrictions

There are no restrictions imposed on persons who deal in the securities of the parties to the bid. However, the Draft Law obliges the bidder to increase the price offered in a bid if it (or persons acting in concert with it) acquire, during the tender, securities of the target at a price higher than the offered price.

### REFORM

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

As described in detail above, Greece, as a member state of the EU is currently in the process of fully implementing the Takeover Directive.

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