Greece

Negotiated M&A Guide 2022

Corporate and M&A Law Committee

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1. INTRODUCTION

1.1 M&A in Greece – background

Mergers and acquisitions made their first appearance in Greece in the mid-1980s. Local M&A activity was initially limited due to the small size of the Greek market, the difficulty of sourcing funds (especially for small businesses), and the dominance of family-owned businesses and their inward-looking corporate strategies.

The creation of a unified market in 1986 resulted in a surge of M&A activity in Europe, which positively affected the Greek economy. As a result, the static Greek M&A landscape gradually developed into a more 'corporate' environment, as a vast number of local and cross-border transactions involving Greek companies materialised.

From 2010 onwards, the significant growth in local M&A has been backed by supportive initiatives from the Greek Government. These initiatives established more efficient privatisation procedures through the enactment of a modern M&A legal framework, and the implementation of economy-bolstering measures such as decreased taxes and social security costs.

Despite 2020 and 2021 being dominated by the Covid-19 pandemic – which had profound adverse effects on the Greek economy – numerous high-profile M&A transactions took place in the banking, energy, food, insurance, health and technology sectors. At the same time, the real estate sector showed signs of vigorous recovery as a result of the boost in the tourism industry and the associated rising demand for short-term residential rentals.

As the Covid-19 pandemic subsides, a further increase of M&A transactions in Greece is expected, particularly involving small and medium-sized businesses (SMEs) trying to adapt in the digitally and economically challenging environment of the post-pandemic era.

As the vast majority of M&A transactions involve Greek companies limited by shares (*sociétés anonymes* or SAs), this analysis focuses on the legal features of transactions involving this company type.

1.2 Legal frameworks applicable to Greek M&A

1.2.1 Reformation of legislation on sociétés anonymes

Law 4548/2018 on the Reformation of Legislation on Sociétés Anonymes (Law 4548), enacted on 1 January 2019, repealed and replaced the outdated Codified Law 2190/1920 on Companies Limited by Shares. Law 4548 introduced significant changes in the day-to-day operation of SAs by establishing a more flexible and up-to-date operational framework, simplifying the pre-existing cumbersome and complicated administrative supervision of these companies and minimising backlogs in their registration process.

1.2.2 Corporate transformations

Law 4601/2019 on Corporate Transformations (Law 4601) consolidated the Greek legal framework on mergers, demergers and conversions, which was previously fragmented in numerous laws. It holistically governs the corporate transformations (including mergers) for all types of entities, irrespective of legal form. Corporate transformations regulated under Law 4601 are defined as mergers, demergers (common demerger, partial demerger and spin-off) and conversions of entities to another company type. A notable innovation of Law 4601 is that it provides a legal definition of ‘business sector’ which, until then, had only been defined in tax legislation for tax purposes.

1.2.3 Tax incentives

Law 4172/2013, Law 2166/1993 and Legislative Decree 1297/1972 provide tax incentives for transfers of shares or assets, and mergers. The incentives mainly pertain to the reduction of income tax on profits and goodwill incurring from the inherent sale of assets and deduction of acquisition expenses.

1.2.4 Cross-border mergers

Law 3777/2009 on cross-border mergers of limited liability companies (Law 3777) transposes the European Union Directive 2005/56/EC into national law. This applies to cross-border mergers between companies established and operating in different (EU) Member States.

1.2.5 Antitrust legislation

Law 3959/2011 on the protection of free competition, as last amended by Law 4886/2022, sets out the legal framework for the control of M&A. According to this law, companies participating in an M&A transaction, whether by acquisition of control or a merger between previously independent undertakings, should file for antitrust clearance by the Hellenic Competition Commission, or notify the concentration (as the case may be), within 30 days from the conclusion of a binding agreement, if:

(a) the participating SAs have a combined global turnover of €150m or more; and
(b) at least two of the participating SAs have a national turnover of €15m or more each.

Smaller thresholds apply to concentrations in the media sector.

1.3 Regulatory bodies

The most prominent regulatory bodies governing Greek private M&A transactions (depending on the industry) are:

- the Bank of Greece, which supervises the regulatory compliance of credit/financial institutions and insurance companies, and approves the acquisition of stakes in such entities;
- the Ministry of Development, which supervises the corporate and statutory functions of the above regulated entities;
- the General Commercial Registry (GEMI), with which all commercial entities are registered;
- the Hellenic Competition Commission, which is responsible for merger controls;
- the Gaming Commission, which supervises gaming companies; and
- the Regulatory Authority for Energy, which supervises energy companies.

2. STRUCTURE TYPES ADOPTED IN PRIVATE M&A TRANSACTIONS

The most common transaction structures adopted in private M&A in Greece are share deals (concerning the acquisition of shares in a company) and mergers (see Sections 2.1 and 2.2).

Other M&A schemes are asset sale and purchase transactions (asset deals), and business transfers. These are less common, and usually opted for by acquirers interested in the purchase of specific assets, or business units as going concerns.[1]

2.1 Acquisition of shares (share deals)

2.1.1 Introduction

A share deal is the most common transaction used by purchasers to acquire a stake in a Greek SA, whether all or part of the shares in a target company. In this transaction, the proprietary status of the assets, liabilities, contracts, employees, authorisations/permits and so on of the target company are not affected, as their ownership does not change.

A shareholder change may, in certain instances, require regulatory notifications or approval. In addition to any regulatory clearances (if required), the consummation of a share deal may be subject to internal formalities set out in the articles of association of the target company. This may include the exercise of pre-emption rights or the change of control restrictions imposed by contracts with third parties (such as suppliers, customers, banks, etc) or by administrative licences and permits.

A share deal ordinarily consummates by means of a share sale and purchase agreement (SPA), which is normally a private agreement executed between the purchaser and the seller containing the basic terms of this transaction, including *inter alia*:

(a) the purchase price and payment modalities;
(b) conditions precedent;
(c) representations and warranties of the seller;
(d) indemnity clauses and business; and
(e) specific undertakings.[2]

The shares may be acquired by a payment in cash or in kind, or by means of the participation of the acquirer in the target company's share capital through a share capital increase (subscription of shares).

[1] Asset deals and business transfers are usually opted for by acquirers, which are not interested in purchasing the shares of the target company, but rather certain assets or even business units thereof. In an asset deal, the acquirer can 'cherry-pick' the assets that are of interest to it, without undertaking any of the seller's liabilities. Specific formalities may have to be complied with in an asset deal depending on the nature of the assets transferred, such as the execution of a notarial deed in case real estate assets are sold, or third-party consents, where this is required by restrictions of the contracts to be transferred. In a transfer of business, the buyer opts for the acquisition of a stand-alone economic unit, or the seller's business as a whole. The practical consequences associated with a business transfer (as opposed to an asset deal) are:

(a) the different tax treatment (stamp duty of 2.4 per cent calculated on the purchase consideration) vis a vis (deductible) VAT, which is generally applicable to the assets invoiced in the context of an asset deal;
(b) application of the provisions of presidential decree 178/2002, which has transposed EU Directive 98/50/EC (known as Transfer of Undertakings (Protection of Employment) or TUPE), by virtue of which all personnel associated with this business, or business unit (as the case may be) are entitled to continue their employment with the acquirer under the same terms; and
(c) application of the mandatory provisions of art. 479 of the Greek Civil Code, which provide for liability of the acquirer jointly with the seller in respect of debts of the transferred business, but up to the amount of the value of the said business.

[2] This applies when the target company is an SA or a private company (IKE). If the target company is a limited liability company EPE), any change to its shareholding (partnership) structure would require the transaction to be documented in a notarial deed.

Any foreign investor (individual or legal entity) is entitled to acquire shares in a Greek SA, unless the target company owns real estate property in border areas of Greece. In this case, a non-EU, or non-European Free Trade Association (EFTA) national or legal entity acquirer is not permitted to proceed with the transaction.[3]

2.1.2 Share deal structure and technicalities

From a statutory perspective, there is no specific legal framework in place governing share deals in Greece. Share deal transactions and their legal processes are principally governed by the provisions of the Greek Civil Code relating to sales contracts, the applicable provisions of Law 4548 and specific provisions of Greek commercial law. Additional legislative acts apply for listed companies, which are outside the scope of the present analysis.

From a technical point of view, the process of concluding a share deal may take the following steps, depending on the intention and business understanding of the contracting parties.

Negotiation phase

During the negotiation phase, the parties set the framework and commit to the principles and basic terms and conditions of the transaction. Of importance for this stage, unless the transaction concerns a 100 per cent takeover, is whether the stake intended to be acquired (or sold) is a majority stake (50 per cent plus one share), supermajority (66.67 per cent and above) or a minority shareholding. Other important items are the purchase consideration and its payment terms, as well as the potential participation of the acquirer in the management of the target company.

According to the provisions of the Greek Civil Code (Article 197 et seq.), during negotiations for the conclusion of an agreement, the parties must act in accordance with the principles of good faith and business morals. From a practical perspective, they must be accurate and truthful in their representations and refrain from providing misleading information. A culpable breach of the above principles constitutes grounds for pre-contractual liability and may generate compensatory rights of the aggrieved party.

At the beginning of the negotiations, it is customary for the parties to execute a non-disclosure agreement (NDA) to ensure that the information disclosed by the seller in relation to the target company's operations and its sensitive business and financial data remain confidential, especially if the purchaser is a competitor. Confidentiality agreements may contain penalty clauses, which, in accordance with the Greek Civil Code, should be fair and reasonable as to their amount. Penalties are adjustable by competent courts if they are found to be excessive.

Finally, it is also common for the parties to agree on an exclusivity undertaking, by which they should refrain from negotiating with third parties for a specified period.

Execution of a term sheet or memorandum of understanding (MOU)

In the context of a share deal and right after the signing of an NDA, the parties normally negotiate and execute a term sheet or MOU, in which they set out the basic terms of their understanding of the transaction. This document ordinarily defines the transaction structure and its perimeter,

[3] This prohibition on non-EU or non-EFTA individuals or legal entities also applies to a standalone purchase of real estate assets located in the border areas of Greece.

the scope of the due diligence process, the transaction timeframe and any exclusivity arrangements. A term sheet or MOU may have a binding or a non-binding effect, predominantly depending on the level of commitment of the parties to conclude the transaction.

Due diligence process

Normally, a due diligence process follows the execution of the term sheet or MOU. The level of detail and depth of the due diligence mainly depends on the time available for its conclusion and the familiarity of the acquirer with the target company's business and operations. In the context of a share deal, the due diligence process would ordinarily extend to legal, financial, accounting and tax matters, while technical, regulatory, real estate or environmental investigation may be also necessary depending on the activities, assets and industry in which the target company operates.

The objective of the legal due diligence would normally include the review of statutory restrictions or formalities associated with the transfer of the target company's shares, which may be set by law, by its articles, or by a shareholders' agreement (if in place). In addition, the scope of the legal due diligence usually extends to restrictions that are triggered by the transaction, such as change of control clauses, and comprises the identification of potential legal risks deriving from pending or threatened litigation, financing agreements and other vital commercial contracts. Depending on the activity of the target company, real estate issues, intellectual property, employment, data protection and applicable administrative permits may form part of the scope of the legal due diligence.

The due diligence process is usually performed through a virtual data room or in physical form, depending on the importance of the disclosed information (business secrets) or where other commercially or legally sensitive information should be preserved. Lately, vendor due diligence reports prepared in advance by the seller's advisers (with or without reliance) have become increasingly popular (mostly in bidding M&A processes), as they facilitate the transaction progress and allow for conclusion in tight timeframes.

Confirmatory due diligence may be also requested by the acquirer if considerable time lapses between the signing of the transaction documents and the closing of the transaction, and/or in cases where the business and associated risks of the target company may be volatile.

2.1.3 Main transaction documents

Share purchase agreement

STRUCTURE

Following the completion of the due diligence process, the parties execute an SPA. On the fundamentals of the share sale and purchase, Greek law distinguishes between:

(a) the act of the sale and purchase of the shares (which is the promise of the buyer to acquire and of the seller to sell); and
(b) the proprietary transfer of the ownership of the shares by the seller to the buyer.

These are legally considered as separate stages of a share sale transaction. In view of this conceptual peculiarity, a SPA governed by Greek law may either provide for a simultaneous sale and transfer of shares, or defer the ownership transfer to a later stage (on closing) – subject to the fulfilment of certain conditions precedent and the confirmed occurrence of certain critical events, such as a regulatory clearance or other agreed milestone.

The most notable practical consequence of the separation of the promissory and transfer stage of a share sale is that the acquirer is not considered to be the owner of the shares until the actual transfer takes place, upon which the buyer should be registered in the shareholders' register of the target company for the transaction to be perfected. In case of a deferred proprietary transfer of the shares (such as in a case of a deferred closing), the parties normally execute a shortform transfer agreement in addition to the SPA, evidencing the due fulfilment of any conditions precedent and confirming the transfer of ownership of the shares.

SPA CONTENTS

In terms of their form and contents, SPAs governed by Greek law have been influenced, to a large extent, by common law templates. They therefore tend to conform to what is known as an 'English style' SPA. This makes the SPA more reader-friendly and comprehensible to foreign investors and their non-Greek law practising advisers.

There is no legal restriction on an SPA being drafted and executed in the English language, but normally the parties prepare a Greek translation if needed for evidentiary purposes (in court), or to be presented in the context of a state tax audit.

From a Greek law and standard market practice perspective, the following SPA items are highlighted as increasingly important for a share sale transaction:

Payment of the purchase consideration and its modalities

The SPA may provide for all ways and modalities of payment of the purchase consideration used internationally, such as retained or holdback amounts, earn-out or deferred payment mechanisms. Depositing the purchase consideration (or part of it) in escrow accounts is rarely used in local practice, in view of the complications and practicalities involved (mostly relating to the difficulty in appointing a local escrow agent and ensuring a timely and unfettered release of the funds).

Representations and warranties

As in international practice, these are formulated based on the findings of the due diligence and briefly pertain to (1) the transferability of the shares and (2) the good standing of the target company and its financial, tax and operating status. Ad hoc warranties may be set for industry-specific aspects of the target company's activity, or against potential risks that were identified during the due diligence process.

Seller's liability limitations

If the share deal concerns the entire shareholding or a majority stake in the target, the scope (object) of the transfer extends to comprise the business of the target company and is not restricted merely to the shares. In this respect (and unless the parties have agreed otherwise), the seller may be held liable for defects or lack of agreed qualities not only of the shares sold, but practically those of the business transferred, in accordance with the applicable provisions of the Greek Civil Code on sales contracts. Depending on the severity of the defect or the lack of agreed quality (for instance, a significant misrepresentation affecting the value of the shares), the buyer may withdraw from (rescind) the sales contract and claim compensation.

The seller would normally attempt to limit its liability against the purchaser in a share deal, noting that, in accordance with mandatory provisions of Greek law, (1) any limitation of liability for acts or omissions resulting from the seller's gross negligence and wilful misconduct is null and void and (2) no reduction or extension of the legal statute of limitations (time bar) is permissible. Irrespective of these mandatory rules, and perhaps due to the strong common law influence, parties to Greek law SPAs often agree on deviating liability limitation provisions in an effort to ringfence their exposure. The validity of these provisions is questionable from a statutory perspective and can be challenged before the courts.[4]

Regulatory filings, approval and notification requirements

Regulatory filings or approvals can relate to a merger control notification or clearance, if the transaction exceeds the thresholds set by law, or to filings and approvals by other authorities, if the target company is a regulated entity (see Section 1.3). Third-party consents or notifications may be required where change of control provisions require it.

Governing law and competent courts

The parties to an SPA involving a target company established and operating in Greece may freely choose the governing law of their contractual relationship and the courts given jurisdiction to hear their disputes. However, considering that the SPA concerns the transfer of rights *in rem* over shares of an SA established and operating in Greece, such rights will be governed by Greek law and any closing formalities mentioned below should be compliant with Greek law for the transfer of shares to be effected.

Closing formalities

Shares in a Greek SA are transferred pursuant to the provisions of the Greek Civil Code on the sale of moveable objects, requiring an agreement between the buyer and the seller and the delivery of the object to the buyer, in combination with the applicable provisions of Law 4548. Registration of the transaction in its shareholders' register is necessary for the buyer to be validly acknowledged as the owner of the shares towards the target company and third parties.

From a technical perspective, on the transfer date (ordinarily the closing date), the transfer of shares is registered with the target company's shareholders' register (always kept by this company. The registration must be executed by both the seller and the purchaser (or their representatives). Execution of the above registration by the parties is not necessary in cases where:

(a) the shareholders' register is kept electronically;
(b) the target company receives a copy of the fully executed SPA; or
(c) the target company receives a notice of transfer in the manner provided for in its articles.

On the transfer date, the legal representative of the target company should (1) annotate the transfer on the share certificates(s) of the seller, incorporating the shares being transferred, and (2) physically deliver the annotated share certificate(s) to the purchaser.

SHAREHOLDERS' AGREEMENT

In share sale transaction where the seller is to retain a stake in the target company, the parties normally opt for a shareholders' agreement (SHA) which, *inter alia*, sets out:

[4] Claims for defects or lack of agreed qualities are subject to a time bar of two years for movable goods (including shares) and five years for immovable (real estate) assets, commencing from their delivery to the buyer.

(a) the parties' rights and obligations;
(b) regulates the conduct of corporate affairs and management of the target company, including voting processes and resolution of deadlock events; and
(c) sets any appropriate share transfer restrictions.

There are no restrictions as to which language the SHA will be drafted and executed in: English is the most commonly used language when a non-Greek contracting party is involved. Although there is no restriction as to the selection of the governing law, the parties are encouraged to select Greek law. This choice eliminates the possibility of confusion as to which law governs their corporate relationship (in view of the fact that the articles are mandatorily subject to Greek law) and helps avoid any enforceability complications in the event of a dispute.

While the parties usually opt for incorporating the provisions of the SHA in the articles of the target company, certain terms of the SHA may or should not be documented in the articles, (1) if they deviate from the mandatory provisions of Law 4548, or (2) for non-disclosure purposes, as the articles of an SA are publicly available on the GEMI website. Irrespective of the above partial lack of adaptation of the articles to the SHA, the terms and conditions of the SHA are contractually binding and have full force and effect *inter partes*. The following terms are commonly included in a SHA.

Management of the target company

The SHA should regulate any matters pertaining to the appointment, composition and operation of the board of directors of the target company, such as the total number of board members, their terms of office, the frequency of meetings, and quorum and majority requirements. Pursuant to Law 4548, the members of the board should be freely elected by the general meeting of shareholders, and shareholders cannot designate, in aggregate, more than two-fifths of the total number of the company's directors. However, the SHA may provide for an appointment of board members on nomination by each party, thus ensuring (*inter partes*) that each party's designated members are elected in the shareholders meeting process, even if they exceed the above restriction set by Law 4548.

Shareholders and board reserved matters

From a corporate governance perspective, the general meeting of shareholders (the general meeting) is the supreme decision-making corporate body of an SA, while the board is the supreme executive body which manages the company's affairs. While Law 4548 contains standard quorum and majority requirements for both the general meeting and the board (principally depending on the importance of the subject matter), the parties to a Greek law SHA may opt for increased quorum and majority thresholds for certain reserved matters, or even require unanimity where they consider this to be appropriate. However, in the determination of the reserved matters and the corporate body competent to address them, the parties should avoid deviating from the principles of Law 4548 on the segregation of duties of the general meeting and the board, especially if these duties are exclusively allocated by law to each of these corporate bodies.

Transfer of shares – restrictions:

The SHA normally contains provisions on the restrictions applicable to the transfer of shares including lock-up periods, put and call options, pre-emptive rights, tag-along/drag-along rights, permissible transfers, consequences of transfers of shares in default and the method of their valuation.

Business plan, funding and dividend policy

In standard practice, the SHA will also contain an agreed business plan (annexed to the SHA) applicable for one or more years of operation of the target company. The parties may regulate matters relating to the funding of the company, potentially combined with anti-dilution mechanisms, and agree on the desirable distribution of profits and dividend policy.

POST-CLOSING ACTIONS

If, following completion of the transaction, the target company becomes a single shareholder entity, it must notify the details of its sole shareholder to GEMI and add the words 'Single Member' to its corporate name by amending its articles accordingly. Any such amendment should be also registered with the relevant tax office.

Additional notification requirements may apply depending on the target company's contractual arrangements with banks, customers, suppliers or other third parties.

Following completion, the target company should update, to the extent necessary, its filings with the Ultimate Beneficial Owners' Registry (UBO Registry) as well as the Central Register of Beneficial Owners, kept by the General Secretariat of Information Systems of the Ministry of Finance (Central UBO Registry) to reflect the change in its shareholding composition within the deadline prescribed by law.

TAX ISSUES

The transfer of shares by individuals is subject to capital gains tax at a rate of 15 per cent. In cases where the seller is a Greek legal entity, any capital gains resulting from the sale of shares are considered business income for tax purposes, taxable at the standard rate provided by the Code of Income Tax (subject to any applicable favourable provisions of double tax treaties).

As of 1 January 2020, Greek legal entities may be exempted from capital gains tax deriving from the sale of shares, provided that certain conditions set out in tax legislation are met.

2.2 Mergers

2.2.1 Structure

Mergers can be carried out either:

(a) by absorption, in which case one or more SAs transfer all their assets and liabilities to another SA following their dissolution and without being liquidated; or
(b) by the incorporation of a new legal entity, in which case two or more SAs transfer all their assets and liabilities to a newly established SA following their dissolution and without being liquidated.

An aspect common to both merger options is that, following the completion of the merger process, the surviving entity is considered the universal successor of the dissolved entity(ies) in respect of all rights, obligations and legal affairs.

Law 4601, which regulates corporate transformations, contains special provisions applicable only to SAs – particularly in merger transactions where one (or more) SA(s), transfers its assets and liabilities to another SA, following its dissolution and without being liquidated. Instead of receiving shares of the acquiring SA in exchange for its shareholding (as would be the case in the context of a typical merger procedure), the shareholders of the acquired SA may receive cash.

The most common type of corporate transformation in Greece is merger by absorption, the main characteristics of which are summarised below.

PRE-MERGER STEPS

Due diligence of the target company would be expected to take place before the initiation of the merger process, if the merger concerns unrelated companies rather than an intra-group reorganisation – eg, between a parent and a subsidiary or generally between affiliated companies.

MERGER STEPS

The main steps that must be followed in mergers by absorption are the following.

Corporate resolutions approving the initiation of the merger process

Although not expressly provided for under Law 4601, it is common that the board of each merging entity resolves upon the initiation of merger proceedings, determines the date of the transformation balance sheet and appoints, if necessary, the persons (auditors and experts) who will undertake the valuation of each or both merging companies and the review of the draft merger agreement (DMA).

Valuation

Although Law 4601 does not explicitly require a valuation of the absorbed SA, a valuation report of the latter or of both merging companies may be considered necessary by the parties. For instance, if the merger through absorption results in a share capital increase for the absorbing company, the preparation of a valuation report is required as the share capital increase is considered a contribution in kind. The valuation report can be prepared either (1) by two independent certified auditors (one for the absorbing and one for the absorbed company), or (2) by a single auditing firm acting for both companies. A valuation report may be also required by the tax incentive law applicable to the merger, or for internal purposes (information of the shareholders).

Drafting of the DMA

The DMA is prepared by the boards of the merging SAs and contains, at a minimum, the information determined by Law 4601, including the details of the merging SAs, the share exchange ratio, any rights provided by the absorbing SA to the shareholders of the absorbed company or other beneficiaries, and so on.

DMA publication formalities – protection of creditors

The board of each merging SA must submit the DMA for publication to the GEMI website or upload it to each SA’s corporate website one month before the date of the general meeting approving the merger.

Explanatory report

The board of each merging company should prepare a detailed explanatory report on the DMA and on the proposed share exchange ratio. The report is submitted to GEMI for registration and publication, and is added to the documents submitted to the attention of the general meeting that will approve the merger. This step can be omitted if a unanimous decision of all shareholders of the merging companies is taken to this effect.

DMA review

The DMA should be reviewed by independent experts and their reports submitted to the general meeting of each of the merging companies and to GEMI for registration and publication. This step can be omitted if a unanimous decision of all shareholders of the merging companies is taken to this effect.

Approval of the merger by the general meeting

The general meeting of each of the merging companies must approve the merger. The merger should be also approved by special categories of shareholders or bondholders, if any. An amendment of the articles of the absorbing SA may be also required for the completion of the merger, for instance when the merger entails a change in corporate scope or an increase or decrease of share capital.

Notarial deed

Once the DMA is approved by the general meeting of the merging companies, it must take the form of a notarial deed.

Registration and publication formalities

The merger notarial deed must be submitted to GEMI for registration by each of the merging SAs, accompanied by the approbatory corporate resolutions. The merger is considered to have been completed and in effect as of its registration with GEMI.

Apart from the above process, Law 4601 provides for a simplified merger process applicable where the absorbing SA is the sole shareholder of the absorbed SA, holding 100 per cent of the shares of the absorbed SA. In this case, the merger is concluded without the need of a share capital increase of the absorbing company or valuation of the absorbed SA. This simplified process (and the preceding step of acquiring 100 per cent of the shares of the target company) is preferable as it is cost-effective and ensures faster completion of the merger, especially in intra-group restructurings.

POST-MERGER STEPS

The main post-merger steps are:

(a) update of the absorbing SA's shareholders' register, UBO Registry and the Central UBO Registry as necessary;
(b) update of the absorbing SA's share certificates and/or issuing of new share certificates to the new shareholders of the absorbing SA (as applicable);
(c) completion of any necessary formalities before the relevant tax authorities and social

security funds (eg, regarding the employees of the absorbed SA which will be transferred to the absorbing SA);

(d) submission and registration of the notarial deed with the competent land registry and/or cadastral office if the absorbed SA possesses real estate assets; and

(e) announcements to external parties such as banks, creditors, suppliers, customers etc.

2.2.2 Timeframe for the completion of the merger

A merger process normally completes in three to four months of its initiation, although the time required may increase if regulatory approvals are necessary.

2.2.3 Protection of shareholders, creditors and employees

Shareholders

Law 4601 includes numerous provisions ensuring the shareholders of the merging SAs are given adequate information to make an informed decision on the merger. In this respect, Law 4601 provides for:

(a) the minimum contents of the DMA, in order to provide sufficient information on the merger's aspects;

(b) the documents that should be made available to the merging SAs' shareholders before the approval of the merger by the general meeting;

(c) extensive formalities for publication of the merger documents (DMA, explanatory and expert reports, merger notarial deed etc); and

(d) the right of one or more shareholders (as applicable) to seek for invalidation of the merger before court.

Creditors

To maximise the protection of creditors of the merging companies, Law 4601 provides that the creditors of each of the merging SAs, whose claims were generated prior to the date of publication of the DMA with GEMI, are entitled to request that guarantees are instituted for their claims that have not become due. This request must be filed within a period of 30 days from the date of publication of the DMA with GEMI, provided that the said creditors are in a position to establish that the repayment of their debts will be at risk as a result of the merger.

Employees

According to Law 4601, the provisions applicable in cases of a change of employer under Presidential Decree 178/2002, which transposed the TUPE Directive, also apply to the employees of the absorbed SA in the context of a merger. In this respect, all existing rights and obligations of the employees of the absorbed SA (as derived from their employment contracts in force at the time of the merger) are transferred to the absorbing SA.

2.2.4 Tax issues

According to a decision of the Ministry of Finance, any tax incentive laws applicable to mergers prior to the enactment of Law 4601 continue to apply, unless their provisions are contradictory to those of Law 4601. In this respect, the tax legislation currently applicable to mergers (apart from Law 4601) is as follows.

Legislative decree 1297/1972 (LD 1297)

This law incentivises business transformations by providing, *inter alia*, income tax exemptions for any goodwill accumulated in the transferred assets and exempts any sales tax on the transfer of real estate property. LD 1297 is rather complex in its implementation as (1) it requires valuation reports on the market value of the merging assets and liabilities, and (2) it imposes restrictions on the use of real estate assets acquired in the context of the transformation and, under certain circumstances, the transfer of shares for a specific time period as of the completion of the transformation.

However, LD 1297 is selected by the merging companies where the absorbed entity owns real estate assets of substantial value and the absorbing company intends to benefit from the increase (step-up) in the valuation of these assets, which results in higher depreciation deductions. Compared to the other two tax incentive laws available for business combinations (Law 2166 and the Tax Code), LD 1297 is rarely selected as it does not provide the flexibility required in a contemporary merger process.

Law 2166/1993 (Law 2166)

This provides tax incentives for business transformations principally related to tax-free reserves that are transferred in the context of a merger, exemptions on income tax, capital concentration tax (in contributed capital as a result of a merger), exemption of stamp and other duties payable for the transfer of assets.

Law 2166 is a flexible incentive law which introduced the pooling-of-interests method in Greece, under which (1) no valuation reports by certified auditors are necessary in the context of a merger and (2) the consolidation of the balance sheet items is made at book value. Under Law 2166, no goodwill is recorded in the books of the absorbing company and therefore there is no increase of the accrued income tax. The main disadvantage of Law 2166 is that any losses of the absorbed legal entity are not carried forward to the absorbing legal entity.

Law 4172/2013

This is the latest Greek income tax code (the Tax Code). The tax incentives introduced by the Tax Code allow for any tax losses of the absorbed entity to be carried forward to the absorbing entity. The taxation of goodwill resulting from the valuation of assets is deferred until these assets are disposed by the absorbing legal entity. The surviving legal entity can depreciate the assets of the absorbed legal entity at the same rate, method and value applicable for these assets before the merger.

Further, each shareholder of the absorbed legal entity is tax exempted from potential capital gains resulting from the merger (unless contribution in cash takes place for the exchange of shares).

Concerning the legislative prospects on tax incentives for mergers, the Ministry of Development and the Ministry of Finance recently announced that a new law will be presented for voting before the Hellenic Parliament. This law aims to provide tax incentives for mergers between companies qualifying as SMEs.

2.2.5 Cross-border mergers

Law 3777 applies *inter alia* to cross-border mergers of Greek SAs merging with companies originating from different EU countries.

In terms of process, a cross-border merger according to Law 3777 is similar to the process applicable to a domestic merger. It involves the preparation and adoption of common draft terms for cross-border mergers, a board report and an independent expert's report (if applicable).

According to Law 3777, the minimum contents – the common draft terms for cross-border mergers and the competence of the corporate bodies and supervisory authorities to approve the merger – are determined by the local law applicable to each merging company. Law 3777 contains special provisions for the protection of creditors, shareholders and employees of the merging companies, along with requiring specific publication formalities.

EU Directive 2019/2121 on cross-border conversions, mergers and demergers, which aims to expand the mobility of businesses within the EU by introducing cross-border conversions and demergers (common, partial and spin-offs), and by promoting the cross-border mobility of EU companies, has not yet been transposed into Greek law.