
Greece

Financial Assistance

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INTRODUCTION

This guide sets out a general overview of the regulation dealing with the concept of financial assistance in Greece in connection with Public Limited Companies (*societes anonymes* or SA).

GENERAL OVERVIEW

Origin of the rules

Financial assistance is regulated in Greek law by article 51 of Codified Law no. 4548/2018 (the Codified Law), which is in line with Article 64 of the EU Directive 2017/1132 of 30 June 2017 (EU Directive 2017/1132).

The term ‘financial assistance’

In Greek law, the term ‘financial assistance’ refers to the direct or indirect advancement of funds, or to the granting of loans or securities, by a public limited company to third parties with a view to the acquisition of shares of the company by such third parties. Any payments made by a public limited company to a third party by virtue of law (such as payment of dividends to the shareholders) do not fall in the definition of financial assistance; thus, a shareholder may use them to acquire more shares and increase its participation in the company.

The rule: financial assistance is prohibited

As a general rule, public limited companies are prohibited from providing financial assistance to third parties for the acquisition of their own shares. Specifically, this prohibition applies to public limited companies and any related companies in the same group which provide financial assistance to third parties with the aim of acquiring shares of the parent company. It also applies to partnerships which provide financial assistance to third parties for the purpose of acquiring shares of the public limited company member of such partnership.

Definition of third parties

A third party is any person, legal or natural, except the employees of a company or the employees of any related company in the same group. The existing shareholders of a company, individual members of the board of directors of a company, its parent company, and the parent company itself are also considered to be third parties. Lastly, individuals acting in their own name but on behalf of the directors, or on behalf of said companies, shall be also considered as third parties.

Purpose of the prohibition

This regulation mainly aims to:

- maintain the company’s share capital; prevent the circumvention of another general rule (the acquisition by the company of its own shares); and
- to prevent the increase of directors’ power due to the granting of financial assistance to third parties via company’s own means.

Conditions under which the prohibition is waived

By virtue of Article 51, paragraph 1 of the Codified Law (which incorporates the option given by EU Directive 2017/1132), a company may provide financial assistance to third parties subject to the conditions set out below. These conditions must be fulfilled cumulatively.

- Under the liability of the board of directors and after a thorough investigation of the creditworthiness of the third party, or of each counterparty in the case of a multiparty transaction, financial assistance shall be provided only at fair market conditions (ie, conditions applicable in practice to similar transactions), especially with regard to the interest received by the company and to security provided for ensuring the company's requirements.
- A written report indicating (1) the reasons for such transaction; (2) the interest it presents to the company; (3) the terms of the transaction; (4) the risks it entails for the liquidity and solvency of the company; and (5) the price at which the third party shall acquire the shares shall be submitted by the board of directors to the extraordinary general meeting for prior approval.
- The written report shall be also submitted to the Commercial Registry for publication to protect the interests of creditors and minority shareholders of the company. In case of (1) any transaction with individual members of the board of directors of a company; (2) a parent undertaking; (3) such parent company undertaking itself, or (4) individuals acting in their own name but on behalf of the members of such bodies or on behalf of such undertaking, an auditor's report shall be submitted to the extraordinary general meeting indicating that such transaction does not conflict with the company's best interests.

The aggregate financial assistance granted to third parties may not result in a reduction of the total shareholder equity to an amount below the amount specified in Article 159, paragraph 1 of the Codified Law (namely share capital plus reserves that may not be distributed). This could be considered as a return of capital to the shareholders, taking also into account any reduction of the net assets that may have occurred through the acquisition of its own shares by the company or on behalf of the company, according to Article 49 of the Codified Law. The company shall include a non-distributable reserve, equal to the amount of the aggregate financial assistance, among the liabilities in the balance sheet for the whole term of the financial assistance.

Exceptions to the rule of prohibition

According to paragraph 4 of Article 51, there are two exceptions to the general rule of prohibition:

- financial assistance provided by credit and financial institutions within the normal course of their operations.
- financial assistance granted by the company to its employees or to the employees of any related company in the same group.

Both exceptions apply under the condition that the financial assistance does not result in a reduction of the net assets of the company below the amount specified in Article 159, paragraph 1 of the Codified Law.

CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

Consequences of breaking the conditions of Article 51

Any infringement – either of the general rule of prohibition or of the conditions under which financial assistance is permitted, or of the conditions regarding the aforementioned exceptions – results in absolute nullity of the financial assistance, irrespective of the parties' knowledge or intention. Such nullity can be raised before the court either by the company or by the third parties.

Furthermore, the board of directors shall be liable for the non-compliance statutory requirements and for any damage caused because of the financial assistance provided.
