Greece

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Market overview

There is consensus that 2023 was a quiet year for M&A activity on a global scale and the Greek market was no exception to this rule. Nevertheless, the predictions for 2024 are rather bullish, with many key players of the M&A life cycle even foreseeing a significant leap in deal flow. The country's period of continued economic stability and the introduction by the Greek state of incentives for investors have significantly improved Greece's attractiveness as an investment destination.

Consolidation of activities remains a key theme of the Greek transactional landscape, with an increased number of corporate transformations and restructurings, either as part of pre-completion reorganisations or on a standalone basis. This trend has helped business owners to unlock value and focus on their core operations, while growing the pool of opportunities for M&A strategists.

On the other side of the spectrum, one cannot ignore the apparent valuation gap between sellers and buyers in many instances over the past few months. Many dealmakers, though, now adopt a positive outlook in relation to previous dissuading factors, such as inflation and high interest rates, a stance that will hopefully help to bridge expectations between the sell side and the buy side, and achieve optimal valuations.

Finally, the potential advantages and pitfalls of generative AI (GenAI) on M&A workstreams seems to be everyone's favorite topic, whether it is facilitating due diligence processes or challenging acquirers that will need to manage related risks. GenAI is here to stay and market players will need to adapt accordingly when delineating their M&A strategies.

Private M&A transactions have historically led Greek transactional practice, with public M&A activity fluctuating in terms of deal volume and value. This observation can be attributed to several factors, including the more stringent requirements involved in public M&A, especially regarding disclosure and increased minority shareholder protections.

Recently, the Greek IPO market has picked up the pace with some listings that made headlines, including that of the Athens International Airport on the Main Market of the Regulated Securities Market of the Athens Exchange, completed in Q1 2024. Noticeably, though, there now seems to be a trend for more public takeovers focusing primarily on small- and medium-sized targets that are battling with accessing liquidity. Against this background, delisting becomes a more viable option for these types of businesses and experienced investors who are familiar with navigating the nuances of public M&A (including private equity, or PE, firms) are showing increased interest in these targets.

In terms of recent publicly announced deals, 2023 closed out with a major acquisition by a multinational group of companies, of one of the most dynamic companies in the Greek recycling sector. The transaction was primarily driven by ESG considerations and yet another testament of the focus being put on such matters, as part of the M&A life cycle. Dealmakers, including large conglomerates, are expected to continue to refine their M&A strategic goals towards a green transition and the adoption of sustainable practices.

Another transaction that drew a lot of attention was the corporate restructuring of Italgas Group, a leading gas distributor in Europe, and its wholly owned subsidiary, DEPA Infrastructure, the leader in natural gas distribution in Greece, with the merger of the three Greek subsidiaries of DEPA Infrastructure through the absorption by DEDA, aiming at the creation of a single distribution operator entrusted with gas distribution services in a 7,700 km network. This was a prime example of how business owners have been utilising corporate transformations, even complex ones, as a means of streamlining operations and creating value.

Economic recovery

In general, following a record-breaking year in 2021, the M&A market in Greece has faced a slowdown, without, however, ceasing to produce notable deals. The M&A deal flow during 2023 continued this somewhat declining trend, which may be explained by factors such as persisting macroeconomic uncertainty, high interest rates, and geopolitical turbulence. These concerns have, in turn, led to sometimes irreconcilable valuation gaps between sellers and buyers but also to extended deal-completion timelines. Some of the deals that have been heavily negotiated by market players for the better part of the past year are expected to come to fruition within 2024. In the same vein, financial sponsors have used 2023 as a stepping stone to set their priorities in a more concise manner.

The outlook for increased deal flow in the next 12 months, especially in terms of inbound activity, is quite optimistic. Firstly, the downturn of 2023 means that there are still a lot of opportunities available for dealmakers. Macroeconomic events remain a concern, but market players are now better positioned to handle them and achieve mutually beneficial deal terms, leading also to higher valuations.

Outbound M&A activity has historically been less strong for Greek corporates and investors. Nevertheless, the country's economic and political stability has helped to create certain major domestic

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Danai's practice extends to corporate transformations and the restructuring of companies. She regularly advises and assists domestic corporate clients and international businesses operating in Greece on day-to-day corporate commercial practices and their regulatory compliance, while she also assists in advising on a wide array of legal issues related to bankruptcy regulation.

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players, especially in the energy and construction sector, which are always on the lookout for targets that will help them to leverage their existing portfolio companies or even achieve diversification though expansion into new fields. These players are expected to remain active and pursue new ventures, particularly in southeastern Europe.

Deal structures in the Greek M&A market remain heavily driven by tax considerations. Both buyers and sellers are interested in securing an optimal tax outcome, which necessitates more complex structures and extended deal-completion timelines to address all the moving pieces of these intricate exercises. At the same time, though, deal certainty remains a focal point of negotiation, especially on the buy side. Prolonged pre-completion periods result in parties getting more creative in minimising walk-away rights and preserving the value of targets.

Optimisation of operations through consolidation also comes frequently into play in the context of structuring, as corporates are less keen on retaining assets that do not necessarily align with their strategic goals and are targeting agility, instead of scale.

PE and venture capital (VC) funds have become an intrinsic part of the transactional landscape in Greece, with many recent transactions being realised through PE/VC funding. Several domestic funds have also managed to launch successor funds and are now eager to deploy considerable amounts of dry powder. The role of the Hellenic Development Bank of Investments (HDBI), as Greece's sovereign fund of funds, cannot be underestimated, with the total funds under HDBI's management currently amounting to €2.1 billion.

On the other hand, the Greek M&A market never caught up with the SPACs hype as in other jurisdictions, such as the US.

Shareholder activism has also been less relevant in recent times, although we may soon see a change in this regard as a response to more public-to-private transactions.

Legislation and policy changes

Private M&A transactions are not subject to a special legislation but are governed by the general corporate law provisions pertaining to the form of the relevant legal entity, along with the applicable civil, commercial, and criminal law provisions, as well as applicable tax laws. In this respect, the key pieces of legislation are:

- Law 4548/2018 on *sociétés anonymes*, Law 4072/2012 on private companies, and Law 3190/1955 on limited liability companies;
- The Greek Competition Act (Law 3959/2011) and **Council Regulation (EC) No. 139/2004 regarding merger control aspects**;
- Law 4601/2019 on corporate transformations; and
- The relevant provisions of the Geek Civil Code, where applicable.

Furthermore, several dedicated pieces of legislation that are also applicable in public M&A transactions are listed below:

- Law 3461/2006 on takeover bids for listed Greek companies;
- Law 3556/2007 on disclosure obligations in the case of acquisition of significant holdings in listed companies;
- **Regulation (EU) 596/2014 on market abuse**;

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- **Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market** and articles 57–68 of Law 4706/2020; and
- The ATHEX Regulation on disclosure requirements of listed companies on the regulated market of the Athens Exchange.

Depending on the type of M&A transaction, the following regulatory bodies may need to be involved in the process:
- The Hellenic Competition Commission (HCC);
- The Bank of Greece;
- The Greek Ministry of Development.
- The Hellenic Capital Market Commission;
- The Regulatory Authority for Energy, Waste and Water; and
- The Hellenic Gaming Commission.

As regards legislative developments, the Greek Parliament recently introduced Law 5055/2023 on the transposition of **Directive (EU) 2019/2121 on cross-border conversions, mergers and divisions of limited liability companies** into the Greek legal system, providing for a single harmonised legal framework governing such cross-border transformations.

Additional regulatory developments are also found in the Greek digital infrastructure sector. Greece recently passed a new Law 5069/2023, which, among others, regulates the operation framework of data centres. Although this type of investment has been on the radar of foreign and domestic investors in recent years, their operation framework remained largely unregulated. The law aims to set forth specific rules, as investor appetite grows towards the digital world's warehouses for date storage and processing.

Following the adoption of the **EU Foreign Direct Investment (FDI) Screening Regulation**, there has been a tightening of regulatory regimes regarding foreign investments in many EU countries. Greece does not yet have a formal FDI screening mechanism in place; it does, however, limit foreign ownership of real estate located in certain regions designated as border areas. It is expected that Greece will shortly be requested to amend its liberalised framework and adopt an FDI screening mechanism in line with the standards of the EU FDI Screening Regulation to tighten its openness regime regarding FDI.

Practice insight/market norms

Zeroing in on the actual Greek market environment, the country has successfully undertaken significant efforts to achieve the resilience and stability required to become an attractive and sustainable investment destination.

In reality, while Greece did face economic difficulties, it has also implemented various reforms to stabilise its economy. As a result, such developments have helped Greece to enhance specific industry dynamics, the regulatory environment, and market conditions. Logistics, data centres, digital technologies and fintech, energy, innovation, and ESG are among the top targets for investors.

The most frequently asked questions surrounding M&A transactions tend to relate to taxation. The optimal tax outcome largely determines the transaction structure and pricing mechanisms. The same applies with the financing options available for financing an investment, especially in an era of expensive bank financing and high interest rates.

Technology has never been as important as it is in today's M&A life cycle, providing dealmakers with a range of powerful tools and resources to help them to identify, evaluate, and execute potential deals. New technologies are reshaping various stages of the dealmaking process, automating repetitive tasks, powering data analysis, and facilitating processes across all phases of the deal. The promise of GenAI to transform so many dimensions of business and enhance investors' agility for greater scale at a lower cost is undeniable; however, risks and challenges must be carefully considered by AI adopters and M&A practitioners.

Public M&A

The acquisition of control of a public company in Greece may be generally structured in the same manner as in the case of a private company; i.e., through a share deal, an asset deal, or a corporate transformation. Shares of publicly traded companies are acquired freely, unless the potential acquirer initiates a takeover bid procedure, thus triggering the application of Law 3461/2006, which enables potential buyers of publicly traded companies to issue bids on a voluntary or mandatory basis.

In relation to hostile takeovers, those are neither specifically regulated by Law 3461/2006 nor precluded. A prospective buyer will have less information on the company and will need to assess the risk of the company's board of directors issuing a negative opinion.

Under Greek law, a public takeover offer may not include any conditions, except regarding obtaining any regulatory approvals, such as merger clearance, and the issuance of any securities that are offered as consideration.

Usual deal protection mechanisms could include letters of credit or guarantee, or escrow accounts for gradual payment of the price, which serve as a guarantee for the protection of transactions. Deal protection measures, such as break-up fees, have not historically featured as a significant part of M&A transactions in Greece. There have been cases where such measures have been agreed between the parties, but to the extent such transactions are governed by Greek law, any relevant measures must comply with local contract law restrictions and general principles of law such as abusive exercise of rights, which could eventually challenge their enforceability.

Private M&A

Private M&A transactions in Greece may implement both main methodologies when pricing a deal. The most common option is the use of completion accounts along with relevant price adjustments. In recent years, however, the locked-box mechanism has grown in popularity due to a strong seller's market, an increased market demand for high-paced M&A transactions, and the desire for clean-cut exits, particularly if financial investors are involved.

Earn-outs as a motivational and retention mechanism for the seller's key management team are frequently seen, while escrows have proven to be a fair and balanced way of securing warranty or indemnity claims.

Private M&A deals are normally subject to conditions, the latter usually referring to merger clearance or other industry-specific regulatory approvals, or to the satisfaction of contractual requirements that are vital for the operation or financial condition of the company (e.g., change of control clauses). Non-occurrence of a material breach of the seller's warranties may also be included as a condition precedent, while a material adverse change as a condition to closing can be a bone of contention.

In general, parties are free to choose the law applicable to their M&A agreement. However, if the agreement refers to rights in rem on assets, including shares, that are considered located in Greece, such rights will be governed by Greek law. In private M&A transactions involving Greek entities, the parties tend to opt for a combination of Greek law and arbitration in a neutral seat.

With regard to the exit environment in Greece, private equity investors and financial sponsors are eager to utilise the funds that have accumulated over the past decade, along with large conglomerates wishing to consolidate and optimise their business.

The IPO market bloomed during 2023, with a considerable number of deals and investments being completed.

Looking ahead

The headwinds of the past couple of years are still being felt throughout the Greek M&A market. Nevertheless, the overall sentiment for 2024 is cautiously optimistic. Market downturns are usually followed by periods of increased deal activity and that is the authors' main expectation for the year to come. Challenges are still going to be posed, but market players are now (hopefully) better equipped to address them and reach a common ground.

What will be interesting to see is how the GenAI saga will impact the M&A life cycle and the legal practice surrounding it. Dealmakers are already shifting away from traditional due diligence exercises and are putting an emphasis on privacy and intellectual property-related issues. Legal advisers are also expected to evolve and come up with tailor-made approaches to manage associated risks. Whether GenAI ultimately streamlines or disrupts M&A workstreams remains to be seen.