GREECE

Law and Practice

Contributed by:
Stefanos Charaktiniotis, Theodore Konstantakopoulos, Stathis Orfanoudakis and Yolanda Antoniou-Rapti
Zepos & Yannopoulos see p.18

Contents

Contributed by: Stefanos Charaktiniotis, Theodore Konstantakopoulos, Stathis Orfanoudakis and Yolanda Antoniou-Rapti, Zepos & Yannopoulos

1. Market Trends

1.1 Technology M&A Market

2021 was without a doubt a record year for the Greek technology M&A market, which was in line with the trends of the global tech scene. Fundraising levels hit new highs, with Greek-based start-ups raising more than USD1 billion in equity and debt, and deal volume and value both recording significant leaps.

This dynamic carried on in the early months of 2022 and culminated in a significant minority acquisition by JP Morgan in Viva Wallet, which thus became the first Greek-based start-up to reach unicorn status.

However, as 2022 progressed, there has been a slowdown of the Greek technology M&A market and an approximate 20-30% downfall in capital raised by Greek start-ups in comparison to 2021. This is also connected with the fact that many Greek venture capital (VC) funds that started their operations in 2017-18 have concluded their initial investment period and are now in the process of raising capital anew as part of their successor funds endeavours.

In general, some early COVID-19 waves and, most importantly, macro events such as inflation, increased interest rates and geopolitical turbulence have slowed the pace of most M&A deals, including technology transactions, with many tech companies now focusing on generating income and achieving organic profitability.

Key players of the M&A cycle have for, the most part, adapted to the challenges stemming from the COVID-19 pandemic, so deal terms focusing on this previously "hot" topic have become less frequent. A trend towards consolidation of activities has been noticed over the past couple of years, which has in turn led to an upsurge of corporate transformations and restructurings, such as demergers and spin-offs.

In terms of funding, 2021-22 has seen increased valuations for Greek tech companies and fewer but larger funding rounds. The number of exits over this span has also significantly increased, mostly in the form of trade sales.

2. Establishing a New Company, Early-Stage Financing and Venture Capital Financing of a New Technology Company

2.1 Establishing a New Company

The Greek start-up ecosystem has transcended the boundaries of the country over the years, with Greek-founded start-up companies being incorporated in various countries with a view to gaining better access to capital and strategic insights. However, the pool of Greek-based start-up companies has also seen a significant increase in recent years, as the country is steadily becoming a more attractive and investor-friendly destination. Greece is making its case as an emerging innovation hub and entrepreneurs are now keener to start their companies in a jurisdiction that is re-building its kit of tools and incentives to promote tech and innovation.

Simplicity in incorporating a new company is also a step in this direction. Greek Law 4441/2016, as amended by Greek Law 4919/2022, introduced the "one-stop shop" (OSS) process for establishing any legal entities. Specifically, one can opt for a simplified One-Stop-Shop (OSS) or Electronic One-Stop-Shop (e-OSS) process. Private companies, which are the preferred start-up option (for further details, see **2.2 Type of Entity**) are incorporated only electronically by

the founder(s) or any authorised person through the e-OSS procedure using the model articles of association.

The establishment process usually takes three to five business days for OSS or one business day for e-OSS.

2.2 Type of Entity

The most common forms available for start-ups under Greek corporate law are the private company (*idiotiki kefalaiouhiki eteria*) and the société anonyme/corporation (*anonymi eteria*). Out of the two, the private company is the go-to option for most start-ups, as it offers flexibility, cost-efficiency and does not require a minimum initial capital (capital in private companies is split in company parts). The société anonyme is in general considered more appropriate for larger enterprises and has a minimum share capital requirement of EUR25,000 that must be paid in cash or in kind. Within two months of establishing a société anonyme, the board of directors must certify that payment of the initial share capital payment has been made. Partial payment is not allowed for contributions in kind and for listed companies. Sociétés anonymes may be privately held or publicly traded.

Other types of corporate forms, such as partnerships and sole entrepreneurships are not common in the Greek start-up ecosystem.

2.3 Early-Stage Financing

Early-stage financing for Greek start-ups typically ranges from friends and family to state subsidies and more recently to family offices or a combination of these. A significant increase in angel investors has also been witnessed over the past few years.

VCs tend to lead seed-funding rounds; this refers to both local and international funds, which are usually involved at a more mature financing stage (Series A onwards). On the other hand, crowdfunding has been less popular with Greek entrepreneurs.

Depending on the type of financing, the nature of the investors and their relationship with the start-up, an investment or equivalent agreement could be put in place. Such agreement may also include certain provisions resembling features of a shareholders' agreement, such as specific corporate decisions requiring the prior consent of the investor or investor majority.

2.4 Venture Capital

Venture capital in Greece is typically provided by venture capital funds, both local and foreign, and has now become easily accessible to Greek start-ups.

In terms of Greek VC funds, noteworthy is the EquiFund initiative of the Greek State and the European Investment Fund (EIF), which was created to promote and accelerate the development of the Greek VC sector. Back in 2018, the EIF selected nine Greek VC funds with differentiated focus (innovation window, early stage window, growth window) that were provided with the necessary funding to invest in a wide range of Greek start-ups.

Foreign venture capital firms have been also very active in the Greek market (mostly in more mature financing rounds). Such VC firms primarily originate from the Balkan region, as well as other European countries with solid VC cultures.

2.5 Venture Capital Documentation

There is currently no Greek industry body that develops standards for venture capital documen-

tation, like the British Private Equity and Venture Capital Association (BVCA) in the UK. Nevertheless, the majority of venture capital transactions involving Greek start-ups are concluded on the basis of documentation following a similar pattern. In addition, some of the Greek VC funds supported by EquiFund (for further details, see **2.4 Venture Capital**) have developed their own template documentation, which is publicly available and can be used as a reference.

2.6 Change of Corporate Form or Migration

Most start-ups are incorporated in the form of private companies. At later stages of the companies' lifecycle, founders often examine transforming their companies into sociétés anonymes. This is often also mandated by institutional investors and their investment horizon as regards the respective companies.

The société anonyme constitutes the most appropriate vehicle available in most regulatory frameworks, public procurement procedures and investment incentives laws (subject to certain capital adjustments, as the case may be), while it is the only vehicle that grants the possibility of being listed on a stock exchange and allows companies to receive financing through the issuance of bond loans (which is followed by a favourable tax treatment).

A change of jurisdiction is not very common for Greek start-ups, but depending on the specific needs and targets set by founders together with any existing investors, the creation of holding entities abroad may be contemplated for tax optimisation purposes. The establishment of branches in other jurisdictions is also frequently used for the development of activities and co-operation with foreign partners.

3. Initial Public Offering (IPO) as a Liquidity Event

3.1 IPO v Sale

The exit environment for Greek start-ups has been quite dynamic recently, with private sales being the preferred exit route in most cases. IPOs are deemed suitable for more mature companies and are expected to become more common, as the Greek market evolves as well. On the other hand, dual-track processes are fairly uncommon, though sophisticated investors could explore such a possibility in the pursuit of maximum flexibility.

3.2 Choice of Listing

In general, Greek companies opting for a listing usually choose the Athens Stock Exchange, rather than a foreign exchange. A combination of both options is also feasible, but it inevitably includes more complexities in order to be attained.

Listing of start-ups has not been a common theme in the Greek market up until now. Nevertheless, the country's increasing financial stability together with recent innovation programs put in place by the Athens Stock Exchange could potentially lead to more listings in the foreseeable future.

3.3 Impact of the Choice of Listing on Future M&A Transactions

Listing of a company on a foreign exchange should not be expected to have an impact on the feasibility of a future sale, other than having to comply with any specific regulations of that stock exchange and navigating any complexities arising from coping with multiple jurisdictions.

4. Sale as a Liquidity Event (Sale of a Privately Held Venture Capital-Financed Company)

4.1 Liquidity Event: Sale Process

In case of a liquidity event in the form of a sale of the company, the sale process can be conducted either through bilateral negotiations with an identified buyer or as an auction. In Greece, bilateral processes are typically the norm, but depending on the type of entity to be sold and the interest that key stakeholders may wish to attract, we have also witnessed several auctions, particularly as regards business sectors/segments that have been put up for sale, as vendors are trending towards consolidation of activities. However, auctions are not suitable for all companies, as they involve extended timelines (compared to a bilateral negotiation) and additional costs.

4.2 Liquidity Event: Transaction Structure

A sale of a privately held Greek technology company with multiple VC investors is usually structured as a sale of the entire share capital of such company. Less frequently, there have been "staggered" deal structures, where a majority stake is sold at first, and then there is a combination of call/put options for the remainder of the shares (owned by founders and/or VCs). These structures are often linked with earn-outs for the founders, as a way of incentivising them as long as they keep running the company.

VC investors opt to safeguard their exit rights in case of liquidity events by means of co-sale rights, such as tag-along rights or, depending on their negotiating power and amounts invested in the company, even drag-along rights, which, in cases of multiple VCs, are usually triggered by decision of an investor majority.

4.3 Liquidity Event: Form of Consideration

The majority of transactions in Greece in the form of a sale of the entire company have cash consideration, whereas stock-for-stock transactions are very scarce. Deals involving tech companies usually include a combination of cash and stock consideration, either upfront or as part of a Management Incentive Plan (MIP), depending on the particularities of each deal and the strategic plans for the acquired entity (eg, whether it will continue as a stand-alone business, be absorbed by the acquiring group, etc).

The stock component of the consideration is heavily negotiated by the founders, who are the main recipients of such stock. On the other hand, VCs are generally less keen to acquire stock as part of a secondary sale.

4.4 Liquidity Event: Certain Transaction Terms

In a sale of a company, all selling shareholders, including founders and VC investors, are requested to provide representations and warranties regarding title to shares and non-encumbrance thereof, as well as capacity to enter into the respective transactional documentation. The remaining so-called "business warranties" are then expected to be provided by the founders and/or any other key selling stakeholder involved in the company's management/operation.

The extent of the business warranties, as well as any specific indemnities addressing "red flags" identified during the buyer's due diligence (DD), are the focal point of negotiation between the two sides, as well as any limitations of liability of the parties standing behind the warranties for potential breaches thereof. For example, tax matters are frequently addressed through an indemnity (especially as regards companies

with many years of operation), as the Greek tax regime is quite complex and the potential exposure may be significant.

Mechanics for gradual release of the purchase price, such as an escrow/holdback, are also frequently used as a means of risk allocation between the parties. Right before the COVID-19 outbreak, an upsurge in warranty and indemnity (W&I) insurance policies was underway, but these are usually opted for in larger transactions, provided the agreed transaction timeline permits it.

5. Spin-Offs

5.1 Trends: Spin-Offs

There is a clear trend towards consolidation of business activities, and Greek companies are now focusing on their core operations; this, in turn, has led to more spin-offs, particularly in the case of larger corporate groups with multiple operations.

Spin-offs are now being utilised as a means of unlocking value, as well as attracting investor interest, and there have been quite a few M&A transactions in the past couple of years (especially auctions), where the spin-off of a non-core business was either performed at a preliminary stage of the transaction (or even at the structuring phase) or designated as a condition precedent for the completion of the transaction.

5.2 Tax Consequences

Structuring a spin-off as a tax-free transaction is feasible in Greece. Greek tax legislation provides various regimes for implementing a tax-neutral spin-off in compliance with the respective tax incentives laws, such as Legislative Decree 1297/1972, Greek Law 2166/1993 and Greek Law 4172/2013 (the Greek Income Tax Code).

5.3 Spin-Off Followed by a Business Combination

Spin-offs followed by business combinations are possible and rather frequent in the Greek market, whether as part of a multi-tiered corporate restructuring or in the context of M&A transactions. Depending on the type of business combination, the parties need to be mindful of and comply with any applicable law requirements, such as the provisions of Greek Law 4601/2019 on corporate transformations.

5.4 Timing and Tax Authority Ruling

A typical timeframe for the completion of a spin-off would be three to four months, including a statutory 30-day "cool-off" period for the protection of creditors of the company proceeding with such spin-off.

There is no requirement to obtain a ruling from a tax authority. To the extent that any tax incentives law has been applied, the proper application thereof and compliance with any related requirements may be checked by local tax authorities as part of a future tax audit.

6. Acquisitions of Public (Exchange-Listed) Technology Companies

6.1 Stakebuilding

It is possible to acquire a stake in a public company in Greece prior to making an offer, and there have been many instances in which buyers have utilised this option. In this regard, such acquisitions are sometimes viewed as advantageous in terms of preparatory work that needs to be done, familiarisation with the relevant business and other stakeholders, etc.

Pursuant to Greek Law 3556/2007 (the Greek Transparency Law), a reporting obligation to the issuer within three trading days is triggered when any person reaches, exceeds or falls below 5%, 10%, 15%, 20%, 25%, 33.33%, 50% and 66.66% of the total percentage of voting rights in a public company. The same obligation applies where a person holding more than 10% of the voting rights experiences an increase or a decrease of such percentage equal to or more than 3% of the issuer's total voting rights. In both of those instances, the calculation of the relevant thresholds shall take into account voting rights held both directly and indirectly. The relevant notification is then submitted to the Hellenic Capital Market Commission (HCMC) as well.

In accordance with Greek Law 3461/2006, any person intending to submit a public bid (whether voluntary or mandatory) has to notify the HCMC and the board of directors of the target company in writing in advance. In public bids, the offeror is required to publish an information memorandum (following approval thereof by the HCMC), which must inter alia set out the offeror's intentions regarding the continuation of the business activities of the offeree company and the offeror's company, as well as the offeror's strategic plans for the two companies.

6.2 Mandatory Offer

Greek Law 3461/2006 provides for a mandatory offer threshold where:

- a person acquires, directly or indirectly, itself or in concert with other parties acting on its behalf, shares representing voting rights in excess of ⅓ of the total voting rights in the target company; or
- a person holding more than ⅓ but less than ½ of the total voting rights in the target company acquires within six months shares representing more than 3% of the voting rights in the target company.

6.3 Transaction Structures

Acquisition of a public company in Greece may be generally structured in the same manner as in the case of a private company. A key consideration in this regard is whether the involved parties' intention is for the target company to remain listed or go private.

A tender offer process remains the typical transaction structure for acquisitions of a public company. However, mergers or other types of corporate transformations have been also utilised in certain instances.

6.4 Consideration; Minimum Price

Pursuant to Greek Law 3461/2006, in public takeover bids, the bidder may offer fair and reasonable consideration in cash or securities (whether listed or not on a regulated market) or a combination of both, whereas in mandatory bids the recipients must be offered the discretion to choose cash consideration.

The above law sets out certain criteria as to what constitutes fair and reasonable consideration depending on the type of consideration offered. Additionally, in specific instances when the offeror has acquired shares during the offer period, the offer cannot be on less favourable terms.

6.5 Common Conditions for a Takeover Offer/Tender Offer

Under Greek law, public takeover offers may not include any conditions, other than any conditions regarding regulatory approvals, such as merger clearance and the issuance of any securities offered as consideration in the context of the offer.

6.6 Deal Documentation

Greek Law 3461/2006 sets out the documents that are required by law in case of a tender offer. Other than that, the conclusion of supporting share purchase agreements (SPAs) is also rather customary and may follow the typical form of an SPA, including an agreed set of representations and warranties, adjusted where necessary to fit the needs of a takeover offer.

In certain cases, bidders opt for a simplified SPA version with minimum content or simply stick to shareholders' irrevocable commitments.

6.7 Minimum Acceptance Conditions

In general, tender offers are not subject to any acceptance conditions. Voluntary offers though may include minimum acceptance conditions. In this context, bidders typically aim at obtaining control of the company for which a tender offer is submitted. This essentially means that more than 50% of the voting rights in the target company will be required, so the respective minimum condition threshold could be set accordingly (taking into account any stake the offeror already holds in the company). However, under Greek corporate law certain resolutions of a company's General Meeting require an increased majority of 67%, so increasing the targeted stake at such level may be preferable for prospective bidders.

Tender offers without a minimum acceptance condition are also not uncommon in the Greek market.

6.8 Squeeze-Out Mechanisms

An offeror that, following a tender offer addressed to all shareholders of a Greek listed company for the entirety of their shares, holds at least 90% of the voting rights in such company has the right to squeeze-out the remaining minority shareholders of the company. The squeeze-out right may be exercised within three months of the lapse of the tender offer acceptance period, on condition that a relevant clause has been included in the information memorandum for the tender offer. The consideration shall be in the same form and at least equal to the consideration of the tender offer, but in any case, the alternative of cash consideration needs to be available at the discretion of the recipients.

A sell-out right is also provided by law within the same time limits in favour of minority shareholders that remain in the target company where an offeror acquires more than 90% of the voting rights.

6.9 Requirement to Have Certain Funds/ Financing to Launch a Takeover Offer

Where the consideration of a takeover offer is in the form of cash, the offeror must provide a confirmation by a Greek or EU credit institution that the offeror possesses the funds for the full payment of the amount that may potentially be paid in the context of the takeover offer. Where the consideration of the offer is in the form of securities, the offeror must provide a confirmation by a Greek or EU investment firm or credit institution that the offeror possesses the securities offered as consideration or that, as the case may be, it has taken all appropriate measures to ensure that the consideration will be paid.

6.10 Types of Deal Protection Measures

Deal protection measures, such as break-up fees, are not common in the Greek jurisdiction. There have been a few transactions where such measures have been agreed between the parties, but the sample size is too small to fully assess their enforceability. General principles of Greek law, such as limitations regarding abusive exercise of rights, may also play a part in limiting the enforceability of such clauses.

A voluntary tender offer can be withdrawn where a competing offer is submitted to the HCMC or following prior approval of the HCMC in exceptional cases – not attributed to actions of the offeror itself – rendering the continuation of the offer overly burdensome for the offeror.

6.11 Additional Governance Rights

A bidder may obtain effective control over a target by acquiring a shareholding stake of more than 50%. Furthermore, as noted under **6.7 Minimum Acceptance Conditions**, a stake of at least 67% will also capture any matters requiring increased majority at the level of the company's general meeting, thus ensuring an adequate level of control over the company's operations even with a stake below 100%.

6.12 Irrevocable Commitments

As mentioned under **6.7 Minimum Acceptance Conditions**, irrevocable commitments by principal shareholders may be sought, as an additional means of supporting the transaction and increasing "deal certainty". Depending on the parties' negotiating power, such commitments may or may not provide for an "out" in case a better offer is made.

6.13 Securities Regulator's or Stock Exchange Process

A person intending to submit a takeover offer (whether voluntary or mandatory) has to provide prior notification in writing to the HCMC. Prior to such notification, no announcement to the public may be made. On the next business day following such notification, the offeror has to announce the takeover offer on its website and in the daily bulletin announcements of the Athens Stock Exchange. The offeror is also required to publish an information memorandum including sufficient information, as provided by applicable law, which will enable the recipients to form an opinion on the offer.

6.14 Timing of the Takeover Offer

The takeover offer acceptance period commences from the publication of the relevant information memorandum and cannot be shorter than four weeks or longer than eight weeks. The HCMC may extend the period by a maximum of two weeks, at the request of the offeror.

Any required regulatory approvals are typically obtained within the above timeframes.

7. Overview of Regulatory Requirements

7.1 Regulations Applicable to a Technology Company

Setting up a new company in Greece is now a rather quick and straightforward process, with the exception of companies engaging in specific regulated activities, such as financial or insurance services, which may be subject to prior approval/licensing by the competent regulatory bodies, like the ones indicatively set out below:

- the Bank of Greece, as regards financial and credit institutions and insurance companies;
- the Hellenic Capital Market Commission, as regards investment firms and any other entities supervised by it;
- the Hellenic Gaming Commission; and
- the Hellenic Telecommunications and Post Commission.

Companies in the technology sector are also subject to the horizontal provisions of the General Data Protection Regulation (EU) 2016/679 (GDPR) and Law 4624/2019, which supplements the GDPR. The competent supervisory author-

ity monitoring compliance with the GDPR and Law 4624/2019 is the Hellenic Data Protection Authority.

Buyers should examine the target's compliance with industry-specific vertical legislation. For instance, operators of essential services (OES) (eg, companies in the digital infrastructure sector, like Internet Exchange Points) and digital service providers (DSP) (cloud service providers, online marketplaces and search engines) are subject to a set of network and information systems security requirements introduced by Greek Law 4577/2018, which transposed into the Greek legal framework the NIS Directive (EU) 2016/1148. The General Cybersecurity Directorate, under the General Secretariat of Telecommunications & Post of the Ministry of Digital Governance, is currently the National Cybersecurity Authority, which is competent to monitor application of Greek Law 4577/2018.

In addition, newly introduced Greek Law 4961/2022 "on emerging information and communication technologies and strengthening of digital governance", has introduced further obligations applicable to DSPs and OESs, including cybersecurity measures for the development, importation, distribution and use of Internet of Things (IoT) technology devices. Moreover, specific rules apply to providers of public communication networks or publicly available electronic communication services, which for certain services need to operate under a general authorisation regime. The competent authority in this regard is the Hellenic Telecommunications and Post Commission (EETT).

7.2 Primary Securities Market Regulators

There is no designated securities market regulator for M&A transactions in Greece. Depending on the type of the transaction and the companies involved (whether they are listed or not, whether they engage in any regulated activities etc), a number of local regulators could come into play:

- the Hellenic Capital Market Commission and the Athens Stock Exchange with respect to listed entities;
- the Hellenic Competition Commission (HCC), which is entrusted with monitoring and promoting competition in the Greek market, as well as reviewing M&A transactions that meet the jurisdictional thresholds set out in Greek Law 3959/2011 (the Greek Competition Act); and
- any of the other regulatory bodies referred to under **7.1 Regulations Applicable to a Technology Company**.

7.3 Restrictions on Foreign Investments

In principle, most restrictions on foreign investments in Greece have been abolished, as the country is constantly aiming at becoming an attractive investor destination. Nevertheless, certain investment restrictions continue to apply as of December 2022, the time of writing, including the following:

- non-EU/EFTA natural or legal persons may not proceed with any transaction without a prior approval from the competent decentralised administration office, in which a contractual right or a right in rem is granted in their favour, or unless such persons acquire shares of companies (irrespective of the companies' legal forms) that own real estate property located in specific border regions of the country set out in Greek Law 1892/1990; and
- Legislative Decree 210/1973 provides for special approval of contracts for the transfer to foreign (natural or legal) persons or for the use/exploitation of mining rights by such persons.

It is to be noted that further to the adoption of the EU Foreign Direct Investment (FDI) Screening Regulation, there has been increased regulation regarding foreign investments in many EU member states. Greece, however, has not yet implemented an FDI screening mechanism.

7.4 National Security Review/Export Control

Except for the restrictions mentioned under **7.3 Restrictions on Foreign Investments**, there are currently no further national security review/export control regulations applicable in the Greek jurisdiction.

7.5 Antitrust Regulations

Takeovers and business combinations (including full-function joint ventures) may be notifiable to the HCC provided the entities involved meet certain turnover-related thresholds, as set out in the Greek Competition Act. The parties involved are subject to a standstill obligation not to consummate the respective transaction until it has been cleared by the HCC. The statutory framework is almost identical to that of the EU, and HCC decisions are usually in line with EU case-law and practices.

The statutory merger control thresholds that would trigger a notification obligation to the HCC are stipulated in Article 6 of the Greek Competition Act and are as follows:

- the combined worldwide turnover of all undertakings concerned amounts to at least EUR150 million; and
- each of at least two undertakings concerned has an aggregate Greek turnover exceeding EUR15 million.

The above criteria must be cumulatively met.

Under the provisions of the Greek Competition Act, the turnovers of the parties are calculated at a group level (ie, they include turnover of all entities belonging to the same group of companies), and they include all products and services offered by the parties.

Larger transactions may be notifiable to the European Commission, where the respective thresholds set out in Council Regulation No 139/2004 (the EC Merger Regulation) are met.

7.6 Labour Law Regulations

The main labour law considerations concerning M&A transactions in Greece usually revolve around the issue of a transfer of business and the protection of the rights of employees in the context of such transfer; thus, the most common instances of such issues are identified either in transactions structured as asset deals or in transactions involving some type of corporate transformation (eg, a demerger or a spin-off), since share deals do not result in a change in the identity of the employer.

A transfer of business within the meaning of the Greek TUPE legislation (Presidential Decree 178/2002) occurs when the transferred economic entity retains its identity, meaning an "organised grouping of resources" (eg, tangible and intangible assets, licenses, personnel, customers), which has the objective of pursuing an economic activity, whether that activity is central or ancillary. The tendency of the Greek courts is to interpret the above definition in a wide manner and in favour of the employees. Indicatively, the courts base their assessment on the transfer of (tangible and intangible) assets, transfer of personnel, transfer of clientele, continuation by the transferee of the same or similar business activity, etc. Based on the foregoing criteria, in the event an acquisition falls within the scope of the

Greek TUPE legislation, there will be a transfer of the respective employees to the new employer by operation of law. The acquirer will assume the obligations of the seller towards such employees, while the seller shall remain jointly liable with the acquirer for any obligations attributed to the period up until the transfer.

A prior consultation with the affected employees and/or their representatives takes place in due time prior to the transfer, in order to inform them of such transfer and minimise, to the extent possible, any risk of employees challenging the transfer to the new employer.

7.7 Currency Control/Central Bank Approval

Except for anti-money laundering rules, there is no currency control regulation or requirement for central bank approval regarding M&A transactions.

8. Recent Legal Developments

8.1 Significant Court Decisions or Legal Developments

Over the past three years, there has been a number of interesting legal developments surrounding M&A transactions in Greece in general and technology M&A as well. More specifically, these pertain to corporate transformations, merger control and family offices.

Corporate Transformations

The enactment of Greek Law 4601/2019 on corporate transformations has certainly been one of the most important recent legal developments in Greece, as it brought much-needed reform by introducing a single framework for corporate transformations for the first time, including their interaction with the various tax incentives laws.

Merger Control

The Greek Competition Act has been recently amended and significant changes were introduced to the competition law framework in Greece, including amendments to the merger control rules, particularly the following.

- The HCC has been empowered to impose remedies in "Phase I" clearance decisions, whereas previously it was only empowered to impose remedies in the context of "Phase II" clearance decisions, which often led to prolonged transaction timelines as notified deals were "pushed" towards a "Phase II'" scrutiny, as an unconditional clearance under "Phase I" would be deemed inappropriate.
- The Minister of Finance and the Minister for Development and Investments may now, by joint decision published after a public consultation, amend the turnover-related thresholds mentioned under **7.5 Antitrust Regulations**, as well as impose ad hoc thresholds for different economic sectors. Such decision must be based on statistics collected by the HCC, following mapping of the relevant markets, as wells as the competitive conditions therein for the past three years.

The above developments have been welcomed as a step in the right direction, but in turn this could mean higher scrutiny of transactions meeting the jurisdictional thresholds and extended timelines, especially considering that the local regulator has been very active recently.

Family Offices

Tax incentives are offered as part of a recently introduced regime for the establishment in Greece of family offices to manage the wealth and assets of Greek tax residents (natural persons) and their families, which may be particularly relevant for the funding of start-ups. Fam-

ily offices falling within the scope of this regime need to incur annual expenditure of at least EUR1 million and employ at least five employees.

9. Due Diligence/Data Privacy

9.1 Technology Company Due Diligence

In general, due diligence on public companies is more limited compared to private M&A transactions and is primarily based on publicly available documents. Selling shareholders may also be in a position to share some limited information with the prospective buyers, provided they comply with the stipulations of the EU Market Abuse Regulation and any other confidentiality restrictions imposed on them.

When providing information to bidders in the context of due diligence, public companies should also ensure the protection of their trade secrets and their intellectual and industrial property rights, including on databases, software, patents, and know-how. Appropriate non-disclosure agreements should be in place.

As a rule of thumb, the same level of information should be made available to all bidders.

Greek Law 3461/2006 imposes a neutrality obligation on the company's board of directors, as of when it is notified of the tender offer and until publication of the result of the offer (or withdrawal thereof). Therefore, the board cannot proceed with any action outside the company's ordinary course of business that could impede the tender offer, including in the course of any due diligence conducted on the company, unless with the prior authorisation of the general meeting of shareholders.

9.2 Data Privacy

As is often the case, technology companies are data-driven or data-related; therefore, considerations around the protection of personal data are relevant in due diligence exercises.

Sharing, disclosing, exchanging and getting access to documents and information directly or indirectly identifying individuals, in the context and for the needs of a due diligence process, constitutes processing of personal data. In this respect, the buyer and target company act as controllers of personal data and are under the obligation to ensure compliance with the provisions and restrictions of applicable data protection legislation, with the GDPR and Greek Law 4624/2019. Considering applicable sanctions, compliance with data protection rules should be a priority in a due diligence process, especially on the part of the target company; this may effectively entail limiting the extent, volume or nature of information shared with a buyer, as well as with other third parties, including auditors, consultants and virtual data room providers.

Importantly, only personal data that is absolutely necessary should be disclosed by the target company and processed by the buyer (principle of data minimisation), while any sharing and further processing of personal data must be conducted in a manner that ensures an appropriate level of security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, by implementing appropriate technical and organisational measures (principles of integrity and confidentiality).

It is absolutely critical that data subjects, for example the target company's employees, customers, and suppliers, whose personal data are to be disclosed to the buyer and other third par-

ties during the due diligence process, have been properly informed, in advance and in accordance with the GDPR standards, about such processing.

In this context, the possibility of sharing anonymised or pseudonymised data for the purposes of the due diligence should always be examined and preferred, when the information purposes can still be properly served.

Furthermore, data protection provisions should be included in the non-disclosure agreements executed between the parties, by virtue of which restrictions must be imposed on the buyer in relation to the ways it can process any personal data disclosed and, in particular, in relation to the time period for which said data can be retained by the potential buyer. Moreover, additional provisions may determine the deletion or return of the data if the transaction is aborted. These provisions should be applicable to other third parties with which the buyer may share the personal data disclosed during the due diligence process, such as external consultants.

Special attention is needed in transactions where the buyer is located outside the EU/EEA; in such case, the disclosure of personal data to such buyer would constitute an international transfer of personal data. Special rules apply for such transfers, which, depending on the recipient country, may require appropriate safeguards to ensure an adequate level of protection, including the execution of the standard contractual clauses approved by the European Commission, carrying out a transfer impact assessment (TIA), adoption of supplementary technical measures, etc.

10. Disclosure

10.1 Making a Bid Public

A bid is made public either when an offeror decides to proceed with a (voluntary) takeover bid or when the mandatory offer thresholds set out under **6.2 Mandatory Offer** are triggered. The relevant steps are as follows:

- the offeror must notify in writing the HCMC and the target company's board of directors; and
- within the following business day, the offeror must announce the takeover bid on its website and in the daily bulletin announcements of the Athens Stock Exchange.

The boards of directors of the target company and of the offeror must inform the representatives of their employees or, where there are none, the employees directly about the takeover bid without undue delay.

10.2 Prospectus Requirements

Regulation (EU) 2017/1129 of the European Parliament and of the Council (the EUU Prospectus Regulation) is applicable in Greece as regards the specific cases of share offerings triggering a prospectus requirement. Shares offered in a stock-for-stock offer are exempted from such a requirement, provided an equivalent document containing information describing the transaction and its impact on the issuer is made available. There is also no requirement for the buyer's shares to be listed on a specified exchange or other identified markets.

10.3 Producing Financial Statements

Under Greek law, bidders are not required to produce financial statements as such in their disclosure documents in a cash or stock-for-stock transaction. In general though, there is a

requirement for Greek companies to publish their approved annual financial statements, which are made publicly available on the website of the General Commercial Registry (and in certain cases, on the companies' websites as well).

10.4 Disclosure of Transaction Documents

In a merger, the merger plan is filed with the General Commercial Registry. As regards takeover bids, the information memorandum is filed with the HCMC.

Other than the above, there is no requirement to file copies of any transaction documents, such as share purchase agreements concluded in the context of takeover bids, with any competent authority.

11. Duties of Directors

11.1 Principal Directors' Duties

The principal duties of directors of Greek companies are designated in a general context, rather than specifically regarding business combinations. Such duties include the following:

Duty of care:
- to act within their powers and in accordance with the law, the company's Articles of Association (AoA) and the legitimate resolutions of the General Meeting;
- to promote the interests of the company;
- to monitor the execution of the resolutions of the Board and the General Meeting (GM);
- to inform the other members of the Board of company matters;
- to maintain the books and records provided under applicable law (eg, tax books, the Shareholders' and UBO Register);
- to prepare and file with the corporate registry in a timely manner the company's annual financial statements in accordance with applicable law;
- to prepare and approve the directors' annual management report (accompanying the annual financial statements);
- to file with the corporate registry all corporate actions provided under applicable law; and
- to file a lawsuit on behalf of the company against any member of the Board (or any other party with administrative powers) that damaged the company by virtue of their actions or omissions.

Duty of loyalty:
- not to pursue individual interests that are contrary to the interests of the company;
- to timely and duly disclose to the other Board members any personal interest or interests of their close family which may arise from the company's transactions and fall within their duties; and
- to refrain from voting on issues with a potential or factual conflict of interests.

Duty of confidentiality:
- to keep confidential information and matters of the company which were made known to them in view of their capacity as Board members.

Non-compete obligation:
- not to engage in acts that are considered competitive to the company's operation (ie, acts that fall within the company's purpose and are proceeded for the member's or a third party's interests are forbidden), unless special permission has been granted by the GM; and
- not to participate as partners in general or limited partnerships or as sole shareholders/

partners in companies with the same purpose, unless special permission has been granted by the GM or a relevant provision exists in the company's AoA.

See **9.1 Technology Company Due Diligence** in relation to the board of directors' neutrality obligation in the case of tender offers.

11.2 Special or Ad Hoc Committees

The establishment of special or ad hoc committees in business combinations by the board of directors is not very common in the Greek market, though we have seen instances of companies deploying such a strategy (especially larger listed entities). As noted under **11.1 Principal Directors' Duties**, under Greek law there is in any case a requirement for directors to disclose conflicts of interest and to refrain from voting on any such matters.

11.3 Board's Role

The board is usually expected to be actively involved in the negotiations for a proposed transaction, as it constitutes the principal management body of the company and is entrusted with deciding on any act concerning the administration of the company, the management of its property and the general pursuit of its purpose, as well as representing the company judicially and extra-judicially. The foregoing is subject to the caveat of the neutrality obligation imposed on the board of directors in the context of takeover bids.

Shareholder litigation challenging the board's decision to pursue an M&A transaction is not very common in Greece. Greek courts tend to side with the recommendations of the board in such cases, provided the directors have shown, in the performance of their duties, the diligence of a prudent business person operating in similar circumstances (business judgement rule), which is also the standard for limiting any related liability of the directors.

Prior to entering into an M&A transaction, bidders should ideally do some preparatory work and obtain information on the target company's shareholders, as well as any previous cases of shareholder activism.

11.4 Independent Outside Advice

Directors are generally supported by a wide range of advisers in connection with takeover and/or business combinations. These can indicatively include financial, legal, tax and technical advisers engaged during different stages of the transaction depending on the specific needs and complexities of each case.

Greek Law 4601/2019 on corporate transformations provides that, in the case of merger, the draft demerger deed needs to be examined by one or more independent expert (such as certified public accountants, auditing firms), who will then need to produce a written report thereon addressed to the company.

As regards takeover bids, the offeror must engage a Greek or EU credit institution or investment firm to act as the offeror's financial adviser and verify the accuracy of the information memorandum. In addition, the board of directors of the target company must also prepare and publish an opinion on the takeover bid, which must be accompanied by a detailed report prepared by a financial adviser with the same characteristics (ie, a Greek or EU credit institution or investment firm).

Contributed by: Stefanos Charaktiniotis, Theodore Konstantakopoulos, Stathis Orfanoudakis and Yolanda Antoniou-Rapti, **Zepos & Yannopoulos**

Zepos & Yannopoulos is one of the longest established law firms in Greece. With more than 132 lawyers and 73 business professionals, it is one of the largest law firms in Greece and the only one offering comprehensive legal and tax and accounting services. Its corporate practice is heavily involved in M&A transactions, primarily from the side of inbound investors, advising on matters from strategy design to due diligence and from negotiation to implementation. The firm's multidisciplinary approach allows it to provide seamless legal services during the life of the legal entity from establishment to exit, covering areas such as corporate governance, directors' liabilities, data protection, labour and employment, AML, competition and tax. Moreover, the firm is a pioneer in Greece in cutting-edge data protection and cybersecurity legal issues, having a dedicated relevant practice for over 15 years, since the onset of the relevant regulations. The firm's long-term involvement has helped it to develop in-depth legal capabilities and gain a true understanding of the technologies it encounters as part of its work.

Authors

Stefanos Charaktiniotis heads Zepos & Yannopoulos M&A and Project Development practice. He has extensive experience on M&A, cross border corporate transactional work, corporate restructuring, and financing projects. He is also engaged in carrying out legal due diligence, drafting and negotiating share purchase and ancillary agreements and undertakes all formalities required for the implementation of acquisitions. Stefanos also acts for technology companies, their investors and management on M&A, private equity and other corporate transactions. Stefanos also has experience in antitrust practice, advising businesses operating in Greece through local subsidiaries or distributors on their compliance with antitrust specifications of EU and Greek antitrust law. He is a member of the firm's executive committee.

Theodore Konstantakopoulos is a member of Zepos & Yannopoulos corporate commercial group and head of the firm's TMT & Data practice. Theodore has extensive experience in advising technology multinationals, global telecoms and social media companies on issues relating to new technologies and media, covering all aspects of electronic communications, data protection, cybersecurity, content regulation, intellectual property, telecommunications and e-commerce law. He also advises on consumer protection, marketing, product labelling and product liability matters. His advice pertains to novel and complex issues on cloud computing, connected devices and blockchain solutions, while he often interacts on issues of regulatory practice with the Hellenic Data Protection Authority and the Hellenic Telecommunications and Post Commission.

Stathis Orfanoudakis focuses on corporate, commercial, competition, M&A and intellectual property law. He has experience in international business transactions, including the establishment of joint ventures, share and asset deals and corporate restructurings. Stathis' practice covers a wide range of matters pertaining to EU and Greek competition law, from merger clearance filings to representation of clients before competition authorities, as well as antitrust corporate compliance. Stathis also regularly advises international and domestic clients on corporate and commercial matters of their day-to-day operation, including the negotiation and drafting of commercial contracts.

Yolanda Antoniou-Rapti focuses on Greek and EU data protection, privacy, cybersecurity, competition and antitrust, corporate and commercial law. She advises on all aspects of EU and Greek data protection compliance issues, including assisting clients in identifying compliance gaps, both in the context of GDPR compliance audits and M&A due diligence reviews, assessing and managing relevant risks, and in taking steps to ensure overall compliance. Yolanda's practice also covers data protection litigation, as well as advisory and assistance tasks on day-to-day matters, including drafting and negotiating privacy terms in contracts, drafting privacy policies and notices, data processing agreements, consent forms, the use of new technologies, e-privacy issues, data breach management and notification, international data transfers, and carrying out data protection impact assessments.

Zepos & Yannopoulos

280 Kifissias Ave.
152 32 Halandri
Athens
Greece

Tel: +30 210 6967 000
Email: info@zeya.com
Web:

Trends and Developments

Contributed by:
Stefanos Charaktiniotis and Stathis Orfanoudakis
Zepos & Yannopoulos see p.25

Recent Developments in the Greek Technology M&A

Technology is at the forefront of developments in the Greek M&A market as part of the rapid change in traditional business models, the rise of M&A transactions concerning technology companies, and the new technological capabilities for executing deals that continue to arise on a regular basis (eg, electronic signatures, artificial intelligence (AI) based due diligence (DD) tools). The various aspects of the "ecosystem" within which all these new technologies and exciting opportunities interact with each other are currently a focal point for key stakeholders in Greek M&A.

Technology M&A deals may be based on the same principles as any other M&A transaction, but they are also unique and deal makers need to be careful and well-prepared when handling the challenges of this fairly new "ecosystem".

Greece as an investment destination and innovation hub

For the better part of the last decade, Greece was faced with severe economic recession and the country's banking system was critically hit, which inevitably led to a lack of trust, especially from foreign investors. After years of economic and political turmoil, the tide appears to have turned and the country is going through a period of stability. The Greek State keeps enacting legislation promoting business opportunities, providing incentives to investors and making the country more open and connected. Additional factors such as the low cost of living and the quality of the local workforce are further boosting the country's attractiveness.

The benefits of the above efforts are slowly being reaped, as investors show an increased interest in the various business opportunities available in Greece, particularly in the technology sector. Innovation and emerging technologies, such as artificial intelligence (AI) and the internet of things (IoT), have brought about numerous market opportunities allowing for greater scale at a lower cost.

Some recent examples of foreign investment in the Greek market include Pfizer's digital innovation hub in Thessaloniki, Microsoft's first data centre region in Greece as part of the "GR for Growth" digital transformation initiative, as well as Deutsche Telekom's landmark launch of the group's IT Hub in Thessaloniki, providing information technology and software services. The latter was implemented in a record time, following Deutsche Telekom's decision to withdraw its operations from Russia following the invasion in Ukraine. The launch included the unprecedented immigration of more than 230 employees and their families. The Greek State acted swiftly in this regard; by joining forces with competent external legal advisors, Greece managed to fast-track the process and issue the required residence permits within a three-week window.

These instances exemplify the country's desire and motivation to create a strong innovation and entrepreneurship culture and reach out to global markets, promoting Greece as a significant innovation hub in South-Eastern Europe,

whether for start-ups and young entrepreneurs or big foreign tech companies. In turn, this is leading to the creation of more job opportunities in the wider technology sector and enabling the Greek government to pursue its "brain regain" initiative along the way.

Elevate Greece initiative

Elevate Greece is a State initiative aiming to identify promising start-ups and support their development and to help create a robust innovation ecosystem. The initiative provides a digital platform where Greek start-ups can apply to be officially accredited by the Ministry of Development and Investments.

The National Startup Registry (NSR) Elevate Greece is the official start-up registry in Greece, entrusted with monitoring start-up entrepreneurship on the basis of specified KPIs and supporting start-ups with benefits and incentives. There are two options for registering with the NSR:

- through a fast-track process without prior evaluation for start-ups meeting certain criteria; or
- through evaluation by two independent evaluators.

The eligibility criteria for registering a start-up with the NSR are as follows:

- the company must have the form of a private company, a limited liability corporation or a société anonyme with registered seat in Greece or have a subsidiary or a branch in Greece (with a Greek VAT number) if its registered seat is outside Greece;
- the company cannot have been operating for more than eight years since its incorporation and prior to the date of submission of the application for registration with the NSR;
- the company must have employed fewer than 250 full-time employees (FTEs) during the last fiscal year, as recorded on the ERGANI platform of the Ministry of Labour and Social Affairs; and
- the company's annual turnover, as set out in the financial statements of the previous fiscal year, may not exceed the amount of EUR50 million.

Start-ups fulfilling the above eligibility criteria may benefit from the fast-track process, provided they fall under one of the following categories:

- start-ups that have already been funded by VC funds, banking institutions and other institutional investors, as shareholders;
- spin-offs of Greek higher education institutions and research centres;
- start-ups funded within the context of HORIZON 2020 Programmes (SME Instrument Phase I and/or Phase II), or with "Seal of Excellence") and successor programmes in HORIZON Europe; or
- start-ups holding a patent registered with the European Patent Office and the US Patent Office that remains in force.

Deal activity and market insights

There is now pretty much universal consensus that 2021 was a historic year for M&A activity worldwide, including in the tech industry. The COVID-19 pandemic brought about a global shift to digital business models and altered the way M&A transactions are made. These factors, combined with the abundance of capital and market opportunities, led to unprecedented levels of M&A activity, both in terms of volume and value.

The Greek technology M&A market was no exception to these trends. Greek-based start-ups raised record-high amounts of equity and debt, while the respective numbers for Greek-founded start-ups based abroad were even more impressive and were estimated to be in excess of USD6 billion. These figures have been widely perceived as a vote of trust in Greek entrepreneurship, which has been supported and promoted over the past few years by the Greek State through various initiatives like Elevate Greece, as mentioned. The JP Morgan/Viva Wallet deal in early 2022 was yet another testament of Greece's booming technology sector and created the first ever Greek unicorn, making headlines and attracting worldwide attention. Other notable deals in 2021 and 2022 were:

- the acquisition of Pollfish, a consumer insight and market research platform, by Prodege, a California-based online marketing, consumer polling, and market research company; and
- the acquisition of Transifex, a Greek translation and localisation automation platform, by US search fund PARC Partners.

The consideration components were not made public in either deal.

Nearing the end of 2022, an unavoidable slowdown of M&A activity is being noticed. COVID-19 and related considerations pertaining to deal certainty, such as the heated debates regarding the (infamous) Material Adverse Change (MAC) clauses, may now seem like a distant memory. However, 2022 has offered no shortage of challenges to deal makers pursuing their M&A objectives. Factors such as increased interest rates, inflation, supply chain disruptions and geopolitical turbulence have had a significant impact on deal activity in most sectors. As a result, valuation exercises have been rendered quite demanding and parties are deploying various mechanisms, such as earn-outs, to bridge the inevitable gap in terms of expectations.

Many tech start-ups are now putting a hold on "burning" cash and are aiming at generating profits and achieving organic growth. There has also been a decrease in funding for new start-ups, as Greek funds in particular are showing a tendency to support their existing investments in companies already in their portfolio. As aptly noted in a recent report by Endeavor Greece, which was launched back in 2012 as part of the global Endeavor Network to support high-impact entrepreneurs, we are entering into an era characterised by the transition from a "growth at all costs" mindset to a "survive to thrive" modus operandi, so capital-intensive tech companies will probably face significant struggles in the short/medium term.

Consolidation of business activities and corporate restructurings/transformations

Consolidation of activities and optimisation of core operations have become a common theme in the Greek market in recent years and are expected to continue at a similar (if not increased) rate, as the lessons learned from the COVID-19 pandemic point towards the targeted setting of strategic M&A objectives and operational agility, as opposed to size and scale. Corporate restructurings and transformations are an essential tool in this context and continue to be utilised as a means of unlocking value and divesting non-core business assets, through spin-offs, demergers, etc. Deal makers are keen to deploy such tools in combination with the various tax incentives laws available in Greece (eg, Legislative Decree 1297/1972, Greek Law 2166/1993 and Greek Law 4172/2013 (the Greek Income Tax Code)), which allow parties to achieve a tax-neutral outcome. Greek law 4601/2019 on

corporate transformations has consolidated the previously fragmented legal framework regarding the different types of corporate transformations into a unified piece of legislation, which also takes into consideration the aforementioned tax incentive rules.

Other key considerations in technology M&A

As noted above, technology M&A transactions generally follow the same principles as any other M&A transactions, but often pose certain unique challenges for the parties involved.

Target valuations and pricing mechanisms

Agreeing on an appropriate valuation for a target company may be particularly difficult in technology M&A transactions, especially as regards start-ups with just a few years of operation and minimum financial metrics to back the valuation exercise. The involved parties are now becoming increasingly innovative and do not shy away from using combinations of various transactional mechanisms to bridge the valuation gap. In this regard, the use of contingent price components is increasing in many tech M&A deals, including deferred payments, escrow mechanisms and earn-outs, while, depending on the type of the investment, the introduction of a Management Incentive Plan (MIP) or Employee Share Option Pool (ESOP) may also be chosen. The parties' negotiating power plays a crucial role in the balance of such mechanisms. In recent acquisitions of Greek tech companies by large EU-/US-based conglomerates, significant amounts have been placed in the contingent consideration basket.

Due diligence

The scope of due diligence over technology companies is largely dependent on the nature of the investor and the type of the investment/transaction, as well as any specific timeframes agreed between the contracting parties. Besides customary points of interest, such as corporate matters, tax compliance, litigation, regulatory matters, etc, increased focus is usually put on the following areas in technology M&A transactions.

- Intellectual property rights:
  - (a) ownership of IP rights and particularly proper assignment of any such rights by employees or freelancers to the target company;
  - (b) registered status and non-encumbrance of IP rights owned by the target company;
  - (c) IP-related litigation; and
  - (d) IP licensing agreements and other material agreements pertaining to IP rights.
- Software:
  - (a) type of software involved (eg, self-developed, open source, etc);
  - (b) identity of developers;
  - (c) assignment of rights over the software to the target company; and
  - (d) materials agreements pertaining to software.
- Employment matters:
  - (a) founders' and other key personnel's employment agreements;
  - (b) IP assignment clauses; and
  - (c) employee disputes.

The above matters are not exhaustive and investors may be more or less strict in their due diligence requirements (eg, increased DD scrutiny is sometimes seen where an institutional investor requires the approval of its investment committee in order to proceed with the conclusion of a deal). In general, though, investors are adopting a risk-based approach and are not inclined to engage in extremely lengthy due diligence procedures. In this sense, emphasis is put on "red flags", material issues for which a contractual

protection will need to be sought (eg, in the form of a specific indemnity).

Representations and warranties - limitations of liability

In the sale of a company, the market standard is for selling shareholders to provide warranties as regards title to shares and capacity to enter into the transaction, whereas any further business warranties are backed by the founders and/or any other key member of the company's management. All "typical" matters one would expect to be warrantied in the context of M&A transactions are also applicable in deals regarding technology companies (eg, corporate matters, material agreements, tax compliance, financing arrangements), while a more extensive set of representations and warranties is usually provided for the matters set out under the due diligence subsection above (IP, software, employment, etc).

In transactions by means of equity injection in the company, the founders are often requested to stand behind a more limited set of representations and warranties, as they are not the direct recipients of any consideration.

The parties also agree on specific limitations of the warrantors' liability for breach of the provided representations and warranties, both in terms of quantum (eg, cap, basket, de minimis threshold) and time. In Greek law-governed transaction documents, such limitations shall only apply in case of breaches of the representations and warranties due to slight negligence; liability due to breaches attributed to gross negligence or wilful misconduct may not be limited under Greek law.

A long, yet promising road ahead

The Greek technology market has only recently started to show glimpses of its potential. However, the unique challenges surrounding the ever-changing technology M&A market still lie ahead, as evidenced by the overall downturn in M&A activity in 2022, including in the tech sector.

The prevalent positive sentiment regarding Greece as an investment destination and innovation hub may act as a springboard, but M&A players should not get carried away. Delineating clear M&A strategies and doing the necessary preparatory work has always been and continues to be the key to efficiently navigating challenges and unlocking value.

Zepos & Yannopoulos is one of the longest established law firms in Greece. With more than 132 lawyers and 73 business professionals, it is one of the largest law firms in Greece and the only one offering comprehensive legal and tax and accounting services. Its corporate practice is heavily involved in M&A transactions, primarily from the side of inbound investors, advising on matters from strategy design to due diligence and from negotiation to implementation. The firm's multidisciplinary approach allows it to provide seamless legal services during the life of the legal entity from establishment to exit, covering areas such as corporate governance, directors' liabilities, data protection, labour and employment, AML, competition and tax. Moreover, the firm is a pioneer in Greece in cutting-edge data protection and cybersecurity legal issues, having a dedicated relevant practice for over 15 years, since the onset of the relevant regulations. The firm's long-term involvement has helped it to develop in-depth legal capabilities and gain a true understanding of the technologies it encounters as part of its work.

Authors

Stefanos Charaktiniotis heads Zepos & Yannopoulos M&A and Project Development practice. He has extensive experience on M&A, cross border corporate transactional work, corporate restructuring, and financing projects. He is also engaged in carrying out legal due diligence, drafting and negotiating share purchase and ancillary agreements and undertakes all formalities required for the implementation of acquisitions. Stefanos also acts for technology companies, their investors and management on M&A, private equity and other corporate transactions. Stefanos also has experience in antitrust practice, advising businesses operating in Greece through local subsidiaries or distributors on their compliance with antitrust specifications of EU and Greek antitrust law. He is a member of the firm's executive committee.

Stathis Orfanoudakis focuses on corporate, commercial, competition, M&A and intellectual property law. He has experience in international business transactions, including the establishment of joint ventures, share and asset deals and corporate restructurings. Stathis' practice covers a wide range of matters pertaining to EU and Greek competition law, from merger clearance filings to representation of clients before competition authorities, as well as antitrust corporate compliance. Stathis also regularly advises international and domestic clients on corporate and commercial matters of their day-to-day operation, including the negotiation and drafting of commercial contracts.

Zepos & Yannopoulos

280 Kifissias Ave.
152 32 Halandri
Athens
Greece

Tel: +30 210 6967 000
Email: info@zeya.com
Web: