PANORAMIC

ACQUISITION FINANCE

Greece

LEXOLOGY

Acquisition Finance

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GENERAL STRUCTURING OF FINANCING

Types of debt and junior capital

What are the typical debt components of acquisition financing in your jurisdiction? Does acquisition financing typically include subordinated debt or just senior debt? Are the providers of such acquisition financing typically lead arrangers, commercial banks or private debt funds?

In 2022, Greece experienced a historic increase in M&A activity, with 94 transactions totalling approximately €10.4 billion, setting new records in both value and volume. In 2023, the total value of M&A activity reached €8.4 billion with 116 deals in total – the five largest of which had an aggregate value of €2.2 billion.

Local commercial banks have been offering competitive pricing terms, aiming to reignite the flow of funds into the real economy after years of primarily focusing on deleveraging non-performing loans from their balance sheets. This shift has positioned them as key drivers in senior lending, including with respect to major M&A transactions.

Greek bond loans remain the prevalent legal tool. Greek bond loans are issued pursuant to the Greek bond loan provisions (Law 4548/2018 articles 59–74), they generally follow standard Loan Market Association (LMA) layout in all contractual aspects and an issuance process applicable to ***sociétés anonyme*** or corporations (SAs). Greek bond loans have been deployed in two ways: tailored for acquisition finance with a covenant package looking at the underlying acquisition deal and granted for general working capital purposes, including the M&A. This flexibility reflects the market's adaptation to diverse financing needs and preferences.

Law stated - 20 April 2024

Types of debt and junior capital

Are debt capital markets transactions (high-yield bonds) available to support acquisition financings in your jurisdiction? Are there restrictions applicable to such activities?

Greek issuers have historically utilised various debt capital market (DCM) instruments, including international high-yield offerings and local issuances listed on the Athens Exchange (ATHEX). However, these issuances have rarely been tailored specifically to finance acquisitions. While the timing and selling story may be relevant to ongoing M&A projects, the use of proceeds is broader, including refinancing of existing loans (potentially including bridge loans used in the M&A process), working capital and even capital expenditure. That said, these types of transactions are available to support acquisition financings and are subject to standard EU capital markets regulations.

Law stated - 20 April 2024

Types of debt and junior capital

Are private debt funds or direct lenders active in your jurisdiction to support acquisition financings? Do they provide unitranche debt facilities to buyers? Are there restrictions applicable to such providers and activities?

It is mostly direct banking lenders that are active in Greek type bond loans, mostly unitranche, whereas some form of subordinated shareholder loan is usually part of the transaction's leverage mix.

The business of lending is generally a regulated activity in the EU, including Greece, but the relevance of licensing requirement, if any, is considered on an ad hoc basis depending on the funding, the parties and the factual and documentary background. Rules applying to lending activity predominantly revolve around licensing requirements (if any) for the lender, disclosure obligations and restrictions on interest rates or fees charged.

Law stated - 20 April 2024

Types of debt and junior capital

Are private capital funds active in providing hybrid capital products (including debt-like preferred equity) in lieu of traditional subordinated or mezzanine debt? Are there restrictions applicable to such providers and activities?

Given the prevalence of commercial (mostly local) bank transactions, these products are less common in the context provided. However, we do see hybrid products (such as preferred equity) in start-up acquisition finance and smaller scale transactions. Overall, while preferred equity funding may be considered in certain circumstances, it remains a relatively niche financing option in the Greek market compared to more traditional forms of financing, such as bank loans or equity investments.

Law stated - 20 April 2024

Choice of law

What territory's law typically governs the transaction agreements? Will courts in your jurisdiction recognise a choice of foreign law or a judgment from a foreign jurisdiction?

Depending on the parties, scale and special features, if any, of the underlying business, the choice of governing law in the transaction documents, which include both the acquisition documents and the financing documents, may follow one of two paths: (1) the exclusive application of Greek law or (2) ***depecage***, being the blend of foreign law (commonly English law) for contractual matters, combined with Greek law for specific technical aspects. We expect to see Greek as the governing law of the transfer of the sold shares under the acquisition agreement. Historically, Greek law was chosen to apply to the issuance of bonds, in so far as relevant to their negotiable character, albeit the terms and conditions of the bonds themselves were governed by either English or foreign law. The latter point has become increasingly flexible in the last couple of years as the 2018 reform of the Greek bond law has

allowed a broader interpretation of the choice of law provisions relevant to bonds issued by domestic or foreign issuers, or both.

All standard European legislative texts, such as Regulation (EC) No. 593/2008 (Rome I) on the choice of law and Regulation (EU) No. 1215/2012 on the recognition of judgments, as well as the New York Convention 1958 on the recognition and enforcement of arbitral awards, are applicable in Greece and allow for simplified, if not automatic, recognition. Recognition of judgments and/or arbitral awards from third countries in Greece is governed by other multilateral or bilateral agreements with the EU or Greece, in combination with the provisions of the Greek Code of Civil Procedure. In most cases (ie, non-EU jurisdiction judgments and awards), a process to declare the judgment or award enforceable in Greece will be required, aiming to ensure that no overriding mandatory provisions are being breached and core litigants' rights have been observed.

Law stated - 20 April 2024

Restrictions on cross-border acquisitions and lending

Does the legal and regulatory regime in your jurisdiction restrict acquisitions by foreign entities? Are there any restrictions on cross-border lending?

In general, there are no limitations on the percentage of ownership that a foreign investor may hold in a Greek company or business.

With respect to real estate assets located in borderline areas of Greece, Law 1892/1990 (as amended by Law 3978/2011) includes restrictions pertaining to (1) non-EU/non-EEA individuals or entities acquiring real estate assets in borderline regions, as well as (2) transactions involving shares, corporate interests or changes in control within companies holding real estate assets in such areas.

Further, Regulation (EU) 2019/452 on foreign direct investment provides for factors to be taken in to consideration to determine whether FDI is likely to affect security or public order. These include critical infrastructure and technologies (eg, artificial intelligence, robotics, cybersecurity), supply of critical inputs, access to sensitive information and freedom of media. In addition, Regulation (EU) 2022/2560, commonly known as the Foreign Subsidies Regulation, introduces a mechanism for the European Commission to investigate financial contributions (as defined in article 3 of said Regulation) granted by non-EU countries to companies engaging in acquisitions within the European Economic Area. In summary, such criteria refer to the country of establishment of the company engaging in an M&A transaction, the turnover within Europe and the amount of aggregate financial contributions that the companies engaging in an acquisition have received from third countries. If the criteria set by the Regulation are met, there is an obligation to notify the Commission of the acquisition before its completion. Following an assessment, if such financial contributions are found to be distortive foreign subsidies, then the Commission may take remedial action. In Greece, Law 4864/2021 on strategic investments offers significant taxation, fast-track licensing and state aid incentives.

Law stated - 20 April 2024

Certain funds

Are there rules requiring certainty of financing for acquisitions of public companies? Have 'certain funds' provisions become market practice in other transactions where not required?

Greek Law 3461/2006 on takeover bids (transposing Directive 2004/25/EC on takeover bids) does require certainty of funds. If the takeover bid involves cash consideration, the acquirer must provide a certificate from a credit institution, either in Greece or another EU member state, confirming their ability to pay the full amount in cash. Similarly, if the consideration consists of securities, the acquirer must obtain a certificate from an investment services firm or credit institution, confirming ownership of the proposed securities or ability to deliver them.

In private M&A transactions, where no statutory requirements apply on certainty of funds, ensuring funds are available at closing is consistently a point of negotiation. Despite the consistency and similarity of documents and structures used in the Greek M&A market, addressing this aspect involves a variety of solutions tailored to the specific circumstances of each deal. Staggered payments, escrow arrangements, commitment letters and/or standard contractual warranties are among the approaches observed in recent acquisition transactions.

Law stated - 20 April 2024

Restrictions on use of proceeds

Are there any restrictions on the borrower's use of proceeds from loans or debt securities?

Other than the general legal requirements concerning international sanctions, anti-bribery, anti-money laundering and anti-terrorism rules, the key restrictions that may become relevant in the context of an acquisition finance transaction are those of intragroup financial assistance. Specifically, if a Greek company under the legal form of an SA intends to provide loans or guarantees and other securities on its assets to secure debt for the acquisition of its own shares or shares of its parent entities, the following would need to be considered (as components of a whitewash procedure).

Non-distributable reserve requirement

A non-distributable reserve equal to the financial assistance amount should be reflected in the company's balance sheet, aiming to protect the interests of creditors and minority shareholders by ensuring that the company maintains a certain level of equity after such transactions.

Net assets consideration

The requirement that the reserve must not reduce the firm's net assets below the sum of its paid-up capital and any non-distributable reserves are consistent with the principle of

maintaining the integrity of the capital of the company. Greek law mandates that certain reserves must not be distributed as dividends and are intended to provide a buffer to absorb losses, thereby protecting creditors.

Board of directors assessment

The board of directors should confirm that the financial assistance is provided under fair market conditions, especially regarding interest rates and guarantees received by the SA. The board must also submit a report to the shareholders outlining transaction terms and risks to liquidity and solvency. If the parties involved are board members or affiliates, an auditor's report is also required.

Shareholder approval for financial assistance (whitewashing)

In Greece, shareholder approval is required for such transactions, and this requires a resolution passed by a qualified quorum (half) and supermajority (two-thirds) at a general meeting of shareholders (while articles may further increase the quorum and majority).

A further constraint on the utilisation of loan funds pertains to newly established SAs is that during the initial two years following an SA's establishment, any acquisition of assets by (1) its founders, (2) shareholders holding over 20 per cent of the capital, (3) board members, (4) relatives of the aforementioned or (5) entities controlled by them, is lawful only upon prior approval by the shareholders' meeting and valuation of the asset by an auditor, published to the trade registry prior to the acquisition. These restrictions do not apply to acquisitions taking place within the ordinary course of business or in a regulated market. The statute of limitations for challenging prohibited acquisitions is five years.

Law stated - 20 April 2024

Licensing requirements for financing

What are the licensing requirements for financial institutions to provide financing to a company organised in your jurisdiction? Are there licensing requirements for non-bank entities providing such financings? Are there any exceptions that permit non-bank entities to provide financings on a limited basis?

Greece applies Regulation (EU) No. 575/2013 and has transposed the Capital Requirements Directive package through Greek Law 4261/2014 and series of secondary legislation acts and guidelines issued by the Bank of Greece in conjunction with the regulatory technical standards and guidance issued the EU supervisory bodies (EBA and ECB). Such framework provides for the regulatory (licensing, capital, operational) requirements and prudential supervision requirements for the taking up of the activity of credit and financial institutions.

By way of general overview, a professional business activity of lending monies is regulated and may not be performed unless properly licensed. If this activity is combined with the holding of monies in deposit, then it is reserved to banks (credit institutions) only. In the absence of deposit taking, lending activity may take various forms and be taken up by

non-bank financial institutions whether pursuant to local rules or cross-border arrangements such as licence passporting schemes among EU member states. The financial institution types that are regulated by the Bank of Greece are the following: financial leasing, factoring, microfinance institutions, loan servicers and credit companies. The latter may provide financing to (1) individuals for consumer needs and refinancing loans, including residential loans, and (2) legal entities for refinancing loans.

Law stated - 20 April 2024

Withholding tax on debt repayments

Are principal or interest payments or other fees related to indebtedness subject to withholding tax? Is the borrower responsible for withholding tax? Must the borrower indemnify the lenders for such taxes? Are there structures that facilitate lending to borrowers by non-bank lenders and funds?

Any legal entity or natural person carrying out business activity and having its tax residence in Greece, or any taxpayer who does not have its tax residence in Greece but operates through a permanent establishment (PE) in Greece making interest payments, must withhold tax on interest payments (currently at a rate of 15 per cent).

The term 'interest' refers to income arising from claims of any kind, whether secured by a mortgage or not, and regardless of entitlement to the debtor's profits, and in particular income from deposits, government securities, securities and bonds, with or without security, and any type of loan relationship, including premiums, repos/reverse repos and rewards deriving from securities, bonds or debentures (articles 61, 62 and 37 of the Income Tax Code (ITC)).

Interest payments on bank loans (excluding bond loans), including default interest, as well as interest on intra-bank deposits, are exempt from withholding tax. Interest received from Greek government bonds and treasury bills, as well as from listed corporate bonds, by legal entities that are not tax resident in Greece and that do not maintain a PE in Greece are not subject to withholding tax (article 64, paragraph 6,9 ITC).

Furthermore, the withholding tax on interest may be further reduced under the applicable Double Tax Treaty in force between Greece and the country of tax residence of the recipient.

In the case of intercompany debt funding structures, withholding tax on interest payments should be reduced to nil under the EU Interest & Royalties Directive. This is on the basis that: (1) the recipient of the interest payment meets the requisite legal form, beneficial ownership and substance conditions, and is not subject to anti-abuse rules (Greek requirements are similar to other European jurisdictions); and (2) the recipient holds at least 25 per cent of the payer's share capital, right to profits or voting rights for at least two consecutive years (subject to providing a bank guarantee, the exemption may apply prior to completing the 24-month holding period).

If a withholding tax gross-up clause is provided in the relevant loan or debt agreement, the total amount of the grossed-up interest, as it arises after the gross-up, is deducted as business expenses and withholding tax is due on the increased interest.

Law stated - 20 April 2024

Restrictions on interest

Are there usury laws or other rules limiting the amount of interest that can be charged?

The Greek Civil Code provides that the maximum contractual interest rate payable is determined by law and any interest exceeding this limit is null and void. The Bank of Greece sets the maximum contractual interest limits, currently at 9.75 per cent (11.75 per cent default interest). There are two key exemptions to this rule: interest on bank loans and bond loans issued pursuant to Greek Law 4548/2018 on ***sociétés anonymes*** (corporations) are not subject to these limitations. Special rules apply when the pricing of Greek bonds is done by way of book building.

Law stated - 20 April 2024

Indemnities

What kind of indemnities would customarily be provided by the borrower to lenders in connection with a financing?

Whether governed by Greek law or international law, the documentation governing acquisition finance transactions, or general lending to large corporates, generally reflects standard LMA concepts. Increased cost and change in law provisions are typically included, along with indemnities covering ESG/environmental, tax and data protection matters, as well as customary provisions for prefunding or reimbursement of the finance parties' costs related to exercising rights (eg, audit, waiver requests, enforcement, etc). Any additional arrangements specific to the underlying M&A transaction will be tailored to each individual case. It is interesting to consider these standard LMA concepts alongside the provisions of the Greek Civil Code, which forbid a lender to claim indemnity for damages resulting solely from the borrower's delay in payment (article 808).

Law stated - 20 April 2024

Assigning debt interests among lenders; syndication and distribution of debt

Can interests in debt be freely assigned, participated in or transferred among lenders? Are there restrictions to the syndication and distribution of acquisition-financing related debt?

Under Greek civil law, receivables are freely assignable, unless otherwise agreed in the assigned contract, and notification to the underlying obligor is necessary for the assignment to qualify as such erga omnes. Regulation 593/2008 (Rome I) would allow assignment under laws different than those governing the assigned claim, but the law governing the underlying claim shall determine assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor, and whether the debtor's obligations have been discharged. If a transfer of the entire relationship (ie, of both claims and obligations) is intended, similar to a novation, this is achieved under Greek law through the simultaneous assignment of the claim and

assumption of the relevant obligations and liabilities, noting that in such cases the consent of the beneficiary of said obligations and liabilities is required by law.

The assignment of loan receivables is subject to a bespoke framework. There are two key structures to assign loan receivables: by way of sale either through (1) outright sale pursuant to the Greek law transposing the EU credit servicers directive (2021/2167) or (2) securitisation to an SPV issuing notes. Both structures involve the appointment of eligible servicers to manage the receivable, especially where the debtors are consumers, and satisfying registration formalities in public registries. If a credit institution assigns a receivable to another bank, then most of these formalities are disapplied. However, notification to the underlying borrower may not be put aside.

Bonds, being negotiable instruments, are freely transferrable (whether in registered or bearer form) with minimal formalities involved and this is the main reason why syndication in Greek loans is achieved mostly, if not exclusively, via lending through bond subscription. This is also relevant on the basis that Greek law does not recognise the concept of trust, whereas the construct of a facility agent or security trustee is explicitly acknowledged under the Greek bond laws.

Finally, transfer of interests in loans without changing the lender on record, such as sub-participations and synthetic structures, are not uncommon in the market but are usually done under English (or other non-Greek laws) in line with relevant LMA and international standards.

Law stated - 20 April 2024

Requirements to act as agent or trustee

Do rules in your jurisdiction govern whether an entity can act as an administrative agent, trustee or collateral agent? Are there licensing requirements to act in such capacities?

Greek law does not recognise the notion of trust or trustee, nor does it allow for the establishment of security for a beneficiary other than the lender on record. This inflexibility becomes particularly relevant where security is registerable in public records (as is the case with real estate mortgages).

The Greek bond law includes the concept of a 'bondholders' agent', which is similar to a facility agent and security trustee, namely it can hold collateral in its own name but for the benefit of the bondholders and generally represent the bondholders in regard to the issuer or borrower and third parties. The same set of provisions recognises the concept of security trustee in non-Greek law governed bond loans, thus allowing any Greek security to be registered in the name of the security trustee so long as the latter is allowed to hold security in its name under the laws governing their role. Under Greek law, the entities eligible to act as bondholders' agent are the following: a credit institution or affiliate, NPL servicer, a licensed investment firm, an AIFM, a qualifying venture capital fund manager or a multilateral development bank. The law waives such requirements where the bond loan is bilateral, with a single bondholder holding all the bonds.

Where the Greek bond law is not applicable, such as international syndicated financings with Greek guarantees or Greek collateral, lenders may collectively share security through

a parallel debt structure. Under this structure, the borrower acknowledges the entirety of the debt towards the security agent pursuant to the debt acknowledgment provisions of the Greek Civil Code. This acknowledgment creates a separate obligation that mirrors the borrower's obligations to the syndicated lenders. Collateral is granted to secure the parallel debt (ie, the amount acknowledged to be due to the agent). The purpose of this structure is to give the agent the right to hold security in its own name and enforce the debt on behalf of the syndicated lenders without the need for each lender to take individual action. The parallel debt addresses key legal obstacles in syndication but must be carefully considered in terms of tax, as it may trigger substantial stamp duty implications depending on the debt acknowledgment qualification and the parties involved in each role.

Law stated - 20 April 2024

Debt buy-backs

May a borrower or financial sponsor conduct a debt buy-back?

Yes, again in the context of Greek bond loans. The issuer is allowed to repurchase its own bonds, subject to the terms of the bond loan, and the issuer may also offer the repurchased bonds to be subscribed anew. This mechanism envisaged under the Greek bond law is used to structure revolving loans within the context of note issuances. If the repurchase of the bonds is made by way of repayment (ie, the repurchase is definitive), Greek law mandates the immediate cancellation of the acquired bonds.

Law stated - 20 April 2024

Exit consents

Is it permissible in a buy-back to solicit a majority of lenders to agree to amend covenants in the outstanding debt agreements?

While there is no outright prohibition on exit consents, these practices may conflict with general principles of transparency and non-discrimination among lenders, such as those outlined in provisions of Greek bond law (articles 60.7 and 63.2). These provisions grant enhanced voting majorities or consents when amending bond terms to the detriment of one or all bondholders. The issues that exit consents aim to address can, to some extent, be mitigated by other mechanisms such as collective action clauses or the replacement of non-consenting bondholders, as well as bespoke voting arrangements. However, prevailing market practice typically does not utilise these concepts.

Law stated - 20 April 2024

GUARANTEES AND COLLATERAL

Related company guarantees

Are there restrictions on the provision of related company guarantees? Are there any limitations on the ability of foreign-registered related companies to provide guarantees?

According to Greek Corporate Law (4548/2018), when ***a société anonyme*** (SA) is involved, board approval and publication in the Greek trade registry are mandatory before granting or receiving a related company guarantee. For listed SAs, drafting and publishing an auditor's fairness opinion to the registry is also required. The guarantee can be effectively provided either (1) after a 10-day period from publication, during which shareholders holding at least 1/20 of the company's shares may contest the approval, or (2) upon obtaining written consent from all company shareholders, relinquishing their right to contest the approval process.

Exceptions from the above formalities include guarantees granted or received within normal business operations, or to direct or indirect subsidiaries without other related parties or granted by the SA's sole shareholder. Similar rules and exemptions apply to Greek entities receiving guarantees from foreign related companies.

Furthermore, related company guarantee agreements executed in Greece may be subject to stamp duty considerations. Stamp duty is a very formalistic tax, and its application will depend a lot on the actual documentation of the transactions. It should be noted that under the stamp duty rules, loan agreements and credits granted by Greek or non-Greek banks, or bond loans issued under law 4548/2018 are explicitly exempt from Greek stamp duty. This exemption extends to other auxiliary guarantee agreements. In this regard, the assessment of the relevant stamp duty implications in cases of related company guarantees depends highly on the actual documentation.

Related company guarantees may fall within the scope of transfer pricing, thus, should be concluded in adherence with the arm's-length principle.

Law stated - 20 April 2024

Assistance by the target

Are there specific restrictions on the target's provision of guarantees or collateral or financial assistance in an acquisition of its shares? What steps may be taken to permit such actions?

Under Greek corporate law, provision by an SA of financial assistance for a third party to acquire its shares is null and void unless specific conditions are met (as part of a whitewash procedure), including:

- a board of directors' decision confirming fair market conditions, especially regarding interest rates and guarantees received by the SA;
- a board of directors' report to shareholders outlining transaction terms and risks to liquidity and solvency. If the parties involved are board members or affiliates, an auditor's report is required;
- approval at a shareholders' meeting with a qualified quorum and majority before conclusion;
- ensuring the assistance does not decrease equity below the lawful dividend distribution threshold; and
- incorporation among the liabilities listed in the target's balance sheet of a non-distributable reserve equivalent to the total amount of financial assistance.

Similar rules apply to subsidiaries assisting in parent company share acquisitions and partnerships where the SA is a general partner.

Law stated - 20 April 2024

Types of security

What kinds of security are available? Are floating and fixed charges permitted? Can a blanket lien be granted on all assets of a company? What are the typical exceptions to an all-assets grant? Are there limitations on security granted by a target to support its acquisition?

Under the Greek civil code, various type of collateral can be established to secure obligations:

1. A pledge over moveable assets, including shares and claims (such as claims arising from insurance policies, non-consumer trade receivables and lease receivables).
2. Mortgages and mortgage pre-notations over real estate assets.
3. Guarantees.
4. Assignment of claims by way of security.

For securities in rem (ie, 1 and 2), the creditor can only be satisfied through enforcement procedures and the proceeds from the asset's sale in an auction process, unless Law 3301/2004 applies (see below).

Special legislation regulates specific types of securities:

- Assignment of claims by way of pledge under Legislative Decree 17.7/13 August 1923, allowing banking institutions to directly collect assigned claims.
- Law 2844/2000 permits non-possessory pledges and floating charges over existing or future (to the extent identifiable or definable) moveable assets (excluding securities and negotiable instruments) and collections of business claims. A floating charge remains flexible until the occurrence of a default or an agreed event at which point it becomes a fixed charge (such as a pledge).
- Law 3301/2004 (which transposes into Greek law the EU financial collateral directive, ie, Directive 2002/47/EC on financial collateral arrangements) allows banking and financial institutions to establish financial collateral over securities, financial instruments, cash and credit claims, with an alternative enforcement process. In the case of default, the creditor can seek satisfaction of its claims through appropriation or liquidation of the collateral assets.

There is no concept of a blanket lien in Greek law – security must be granted on each individual asset or claim (or group of assets or business claims in the case of a floating charge).

Securities by a target supporting its acquisition are subject to restrictions, including a board report assessing risks, shareholder approval, limits on the amount of financial assistance,

a non-distributable reserve requirement equal to the amount of financial assistance, and an auditor evaluation if related parties are involved.

Law stated - 20 April 2024

Requirements for perfecting a security interest

Are there specific bodies of law governing the perfection of certain types of collateral? What kinds of notification or other steps must be taken to perfect a security interest against collateral? Do stamp duties or similar taxes apply to taking a perfected security interest?

The formalities for perfecting securities differ based on the type of security being provided.

Mortgages on real estate assets, as per the Greek Civil Code, are established through a notarial agreement (or by operation of law or a court decision in certain limited cases) and subsequently recorded in the public archives of the land registry or cadastral office.

Registration of a mortgage pre-notation requires the issuance of a court decision, which must be registered too in the public archives of the land registry/cadastral office. When a prenotation has been converted into a full mortgage, the mortgage is deemed to have been registered as from the date of the prenotation's registration, which means it ranks as if registered at that date.

Non-possessory pledges and floating charges over movable assets, governed by Greek law 2844/2000, require a written agreement (notarial deed or private agreement with a certified date, which is usually obtained through service of the agreement via court bailiff to the pledgor) and registration in the public archives of the pledge registry.

A share pledge requires a written agreement serviced via court bailiff to the company and an annotation of the pledge on the share certificates and shareholders' registry.

Claims assigned either under the Greek Civil Code or by means of pledge pursuant to legislative decree 17.7/13.8.1923 (pertaining to banking institutions) necessitate notification to the debtor via a court bailiff. Where the assignment involves receivables against the Greek state, there is a special notification process to be followed to satisfy the relevant requirement under the decree.

Law stated - 20 April 2024

Renewing a security interest

Once a security interest is perfected, are there renewal procedures to keep the lien valid and recorded?

Securities typically remain valid until revoked or discharged, without the need for renewal, except for those governed by Law 2844/2000 (eg, a non-possessory pledge, floating charge), which have a 10-year validity period. Renewal is made upon request to the pledge registry three months before expiration.

Law stated - 20 April 2024

Stakeholder consent for guarantees

Are there 'works council' or other similar consents required to approve the provision of guarantees or security by a company?

No.

Law stated - 20 April 2024

Granting collateral through an agent

Can security be granted to an agent for the benefit of all lenders or must collateral be granted to lenders individually and then amendments executed upon any assignment?

Greek law does not recognise the notion of trust or trustee, nor does it allow for the establishment of security for a beneficiary other than the lender on record. This inflexibility becomes particularly relevant where security is registrable in public records (as is the case with real estate mortgages).

The Greek bond law includes the concept of a 'bondholders' agent' which is similar to a facility agent and security trustee, namely it can hold collateral in its own name but for the benefit of the bondholders and generally represent the bondholders with regard to the issuer or borrower and third parties. The same set of provisions recognises the concept of security trustee in non-Greek law governed bond loans, thus allowing any Greek security to be registered in the name of the security trustee so long as the latter is allowed to hold security in its name under the laws governing their role.

Where the Greek bond law is not applicable, such as international syndicated financings with Greek guarantees or Greek collateral, lenders may collectively share security through a parallel debt structure. Under this structure, the borrower acknowledges the entirety of the debt towards the security agent pursuant to the debt acknowledgment provisions of the Greek Civil Code. This acknowledgment creates a separate obligation that mirrors the borrower's obligations to the syndicated lenders. Collateral is granted to secure the parallel debt (ie, the amount acknowledged to be due to the agent). The purpose of this structure is to give the agent the right to hold security in its own name and enforce the debt on behalf of the syndicated lenders without the need for each lender to take individual action. The parallel debt addresses key legal obstacles in syndication but must be carefully considered in terms of tax, as it may trigger substantial stamp duty implications depending on the debt acknowledgment qualification and the parties involved in each role.

Law stated - 20 April 2024

Creditor protection before collateral release

What protection is typically afforded to creditors before collateral can be released? Are there ways to structure around such protection?

The issue is not comparable in Greece on two grounds: (1) guarantees and collaterals are by nature ancillary to the obligation they secure and hence, unless released by the creditor

or otherwise agreed, they will remain in force for as long as the secured obligation subsists, and (2) the trust as such is not acknowledged in Greece but the Greek bond law (ie, articles 59-74 of Greek law 4548/2018), could be considered to be establishing similar mechanisms to the US Trust Indenture Act in the sense that it provides for an agent to act in the name and for the benefit of the bondholders and to hold collateral in its own name but for the benefit of the noteholders.

Law stated - 20 April 2024

Fraudulent transfer

Describe the fraudulent transfer laws in your jurisdiction.

There are two types of fraudulent transfers that can be challenged:

1. standard fraudulent transfers governed by the Greek Civil Code; and
2. insolvency-related claw back.

As far as (1) is concerned, creditors may request the nullification of any transfer made by a debtor to their detriment if the debtor's remaining assets are insufficient to satisfy their claims. Renouncing inheritance or settling overdue debts does not qualify as a transfer, whereas an installment in lieu of payment does.

The transfer can be invalidated if the third party involved was aware of its fraudulent nature, except in cases of gratuitous transfers, where awareness is irrelevant. This awareness is presumed if the third party is related to the debtor, but this presumption expires if more than a year has passed between the transfer and the filing of the lawsuit challenging the transfer as fraudulent.

Nullification only benefits lenders who contested the transfer's legitimacy.

The statute of limitations for challenging fraudulent transfers is five years.

As far as (2) is concerned, transactions subject to insolvency clawback typically include preferential payments to specific creditors, asset transfers at undervalued prices or transactions made with the intent to defraud creditors performed during the 'suspicious' period preceding the debtor's declaration of insolvency or bankruptcy.

The Greek Civil Code extends additional safeguards to creditors in the event of a business transfer, imposing on the transferee a responsibility for the debts assumed from the acquired business, limited to the value of the assets transferred, alongside the ongoing liability of the transferor. Any agreement to the contrary in detriment of the creditors is null and void.

Law stated - 20 April 2024

DEBT COMMITMENT LETTERS AND ACQUISITION AGREEMENTS

Types of documentation

What documentation is typically used in your jurisdiction for acquisition financing? Are short-form or long-form debt commitment letters used and when is full documentation required? Are there market practices that require the use of particular types of documents or forms in your jurisdiction?

In Greece, there is no equivalent association to the Loan Market Association (LMA) that develops and publishes standardised clauses or documentation, or both. Each bank has its own set of documents per their specific formulation, but most market documents generally reflect standard LMA concepts.

Broadly speaking, there are two types of tools and corresponding documents that are used in acquisition financing (and the same goes for other types of financings, eg, project, real estate and general corporate lending, etc) – bond loans for long-term financing and revolving credit accounts for short-term bridge financings:

- Bond loans issued by Greek corporations (société anonyme companies (SAs)) pursuant to specific legal framework (Greek law 4548/2018): this is a multiuse, tax-efficient legal tool designed (and revamped in 2018) to serve different types of deals, from bilateral (even intragroup) lending to public offerings of listed bonds. It involves standard LMA clauses of the relevant type of financing combined with standard clauses on the issuance (in paper or electronic form) and subscription of notes pursuant to the specific type of corporate resolutions of the issuer. It is greatly used by Greek banks but also allows for non-banking lenders to finance Greek corporates based on similar privileges and exemptions, including by way of releasing bond issuances from interest rate restrictions imposed by usury laws on non-banking loans.
- Uncommitted revolving credit accounts, or ***allilochreos***: (an old, Greek-specific and heavily used hybrid bank credit product, consisting of a credit contract and an account contract). It was established through the Greek Civil Code as a joint account between two merchant entities, where both parties are entitled to use the account (drawing and depositing funds) then periodically net-off the account to assert a positive or negative balance in favour of either party. This concept was adapted by the Greek banks to create a credit product operating as a revolving credit line, where the bank disburses monies into the bank account and the borrower can draw and credit back the drawn amount. The bank then periodically 'closes' the account (ie, runs the net-off exercise) to assert credit or debit balance. Documentation for this product is standard and seldom negotiated, despite the sometimes-archaic language, maximalist lenders' discretions and open-ended covenants. It is often used as a bridge facility tool to cover funding needs during the period it takes to negotiate and close the medium or long-term financing.

With the above background in mind, a practice not uncommon in Greece is that the borrower or acquirer first agrees and signs the long term financing term sheet with the bank, then the bank obtains credit approval for the deal on the basis of the term sheet and, if the timing of the broader M&A transaction is such that the long term financing may not be negotiated and finalised by the M&A closing, a bridge financing is used to pay the purchase price. The long-term financing's use of proceeds then includes a repayment of the bridge loan.

Law stated - 20 April 2024

Level of commitment

What levels of commitment are given by parties in debt commitment letters and acquisition agreements in your jurisdiction? Fully underwritten, best efforts or other types of commitments?

In the Greek banking sector, as in many European countries, the preference for commitment letters or term sheets can depend on the type of financing and the size and complexity of the transaction. Term sheets are quicker to prepare and can expedite the negotiation process, especially where there are established business relationships among the parties involved, which may be particularly relevant for Greek financial markets where local financiers have a strong presence. In light of this, we see commitment letters being utilised to a lesser extent compared to term sheets.

A typical sequencing would be to agree on a term sheet that subjects closing or funding to the entry into the long-form documentation and obtaining final credit and corporate approvals. The level of detail of the terms set out in the term sheet is often representative of the complexity or scale of the deal: the more complex the deal, the more detailed the term sheet and fewer the references to 'standard' covenants and clauses. These preliminary documents seldom elaborate on commitment aspects and syndication often appears at the lender's discretion rather than as a mandate to arrange or underwrite a syndicated financing. The nuances on the level of commitment included in term-sheet type documentation and whether or how a borrower could enforce on those heavily depend on the specific wording used to describe which aspects of the term sheet are binding, if any, and the overall factual background of negotiations. For example, the level of requisite commitment may become stronger in specific circumstances, such as privatisation transactions where a public tender process is launched with respect to shareholdings of the Greek state in state-owned (private or public) companies and proof of funds availability is sought as a matter of bid eligibility.

Where international financiers come into the picture, the relevant documentation will be governed by English or other non-Greek law, and the form and content thereof would reflect the practices and policies of the relevant financier.

Law stated - 20 April 2024

Conditions precedent for funding

What are the typical conditions precedent to funding contained in the commitment letter in your jurisdiction?

The practice in Greece is generally aligned to other EU jurisdictions. The usual conditions precedent (in the absence of any bespoke construct warranted by the specifics of the underlying M&A deal) would include evidence of corporate authority, regulatory consents (if applicable), no default of the borrower (including compliance with agreed financial ratios), the perfection of transaction security, no material adverse change and payment of the finance parties' fees, etc. Conditions for entry into long-form financing documentation may include due diligence of the lending bank and, obviously, agreement and finalisation of the long-form documentation.

Law stated - 20 April 2024

Flex provisions

Are flex provisions used in commitment letters in your jurisdiction? Which provisions are usually subject to such flex?

There is no established practice to yield concrete market trends as to the type of provisions that would fall under such mechanism.

Law stated - 20 April 2024

Securities demands

Are securities demands a key feature in acquisition financing in your jurisdiction? Give details of the notable features of securities demands in your jurisdiction.

Securities demands whereby a lender, in return for a bridging loan, can compel a borrower to issue securities in a quasi-automatic way, are not a key feature in acquisition financing in Greece compared to other jurisdictions. Similar results, namely bridge financing with or without collateral and/or establishing a collateral package that includes securities issued by the borrower or the target, may be achieved by alternatives structures or instruments (debt, equity, convertible or other negotiable notes).

Law stated - 20 April 2024

Key terms for lenders

What are the key elements in the acquisition agreement that are relevant to the lenders in your jurisdiction? What liability protections are typically afforded to lenders in the acquisition agreement?

The practice in Greece is generally aligned to other EU jurisdictions in terms of SPA bankability. The lenders will seek to scrutinise clauses in the acquisition agreement such as: governing law, conditions precedent and key warranties, covenants and indemnities relevant to the underlying business, especially where due diligence findings warrant specific remedies.

Law stated - 20 April 2024

Take-private transactions

In the context of take-private transactions – what are the common issues relevant to acquisition financings in your jurisdiction?

The Greek market does not materially differentiate from other EU jurisdictions in these matters, which are mostly relevant to the life cycle of the takeover and delisting process, being heavily regulated and not always within the control of the parties. Greece has transposed Directive 2004/25/EC on takeover bids into Greek Law 3461/2006, setting out the rules for the conduct of takeover bids, including the obligation of the bidder to make

a mandatory public offer when certain thresholds of share ownership or voting rights in a company are exceeded. According to Greek Law 3371/2005, which regulates the conditions for listing and delisting of securities, for a voluntary delisting, a special resolution must be passed by the shareholders, requiring a supermajority of 95 per cent of the voting share capital of the company. The Hellenic Capital Markets Commission (HCMC) must also approve the delisting proposal. The approval of a supermajority of 95 per cent of the voting capital is also necessary for a corporate transformation decision to be adopted (merger, demerger or conversion) to the extent it leads to the delisting of the company's shares.

Law stated - 20 April 2024

Take-private transactions

What are the rules and procedures for 'squeeze-outs' in your jurisdiction? Before a 'squeeze-out', are there permissible restrictions on acts by the target? Is it possible to obtain security pending the completion of a 'squeeze-out'?

Private companies

The Greek corporate law on SAs regulates the sell-out (initiated by the minority shareholders) and squeeze-out (initiated by the majority shareholder) processes, subject to the provisions of the Greek Takeover Bid Law (3461/2006) governing public offers for the acquisition of public (listed) companies' tradable securities.

Squeeze-out of minority shareholders by majority shareholder

A shareholder owning at least 95 per cent of an SA's share capital can initiate a squeeze-out of minority shareholders' shares within five years from the acquisition of that majority stake. This is done by filing an application with the competent court, supported by an auditor or appraiser determining fair consideration.

Sell-out to majority shareholder

Where a shareholder holds (alone or through affiliated parties) at least 95 per cent of an SA's share capital, the remaining shareholders have the right to request the competent court, within five years from the acquisition of the above stake by the majority shareholder, to require said shareholder to buy their shares. The court sets a fair consideration ensuring it reflects the true value of the shares. To assess share value, it may request an auditor's opinion.

Exit right/ sell-out to the company

Shareholders can initiate a legal action to redeem their shares from the company if their continued presence within the company would be clearly unprofitable due to seat

relocation, imposition of share transfer restrictions, alteration of corporate scope or other circumstances specified in the articles of association.

The above rules apply to both listed and non-listed entities, but they are seldom utilised in listed entities where the Takeover Bid Law prevails due to its specificity. However, during a takeover bid, these provisions cannot be enforced until three months after the bid acceptance period ends, during which the offeror can demand the transfer of minority shares.

Listed companies (Takeover Bid Law)

Squeeze-out right: if an offeror who initiated a takeover bid to acquire the entirety of a target's securities ends up holding at least 90 per cent of the target's voting rights, it can force minority shareholders to sell all remaining shares held by them at a fair price, to the extent that a reference to such squeeze-out right was included in the information memorandum, by submitting a request to the HCMC and under the conditions outlined in the Takeover Bid Law.

Sell out right: an offeror who initiated a takeover bid to acquire the entirety of a target's securities ends up holding at least 90 per cent of the target's voting rights, it must buy the remaining securities offered by the minority shareholders within three months from the disclosure of the results of the bid, at a cash price equal to the proposal's consideration.

Until the disclosure of the results of the takeover bid or its withdrawal, the board of directors of the target cannot take any action outside the ordinary course of business of the target that may lead to the termination of the bid, without prior authorisation from the shareholders' meeting.

Law stated - 20 April 2024

Public filing of commitment papers

Are commitment letters and acquisition agreements publicly filed in your jurisdiction? At what point in the process are the commitment papers made public?

There is no requirement for public filing of commitment papers or acquisition agreements, subject to general rules on capital markets disclosure and antitrust filings. Greek Law 3461/2006 on takeover bids (transposed from Directive 2004/25/EC on takeover bids)) does require that a confirmation on availability of funds is disclosed to the public but this does not mean the commitment letter, as such, is included in the information memorandum. If the takeover bid involves cash consideration, the acquirer must provide a certificate from a credit institution, either in Greece or another EU member state, confirming their ability to pay the full amount in cash. Similarly, if the consideration consists of securities, the acquirer must obtain a certificate from an investment services firm or credit institution, confirming ownership of the proposed securities or ability to deliver them. If the deal is externally financed, some disclosure is expected to be made in the information memorandum in this respect.

Law stated - 20 April 2024

ENFORCEMENT OF CLAIMS AND INSOLVENCY

Restrictions on lenders' enforcement

What restrictions are there on the ability of lenders to enforce against collateral? Can lenders engage in self-help through foreclosure or the exercise of remedies under stock pledges or control agreements?

Enforcement and collateral liquidation in Greece are court driven and no appropriation or self-help optionalities are in principle available (except where Law 3301/2004 on financial collateral applies). Following the issuance of an enforceable title asserting the right of the lender and ordering the borrower to pay the claim (payment order), the lender must serve the title to the borrower and wait for a period of three business days before proceeding with asset seizure (foreclosure) and a mandatory public auction. During this phase, both the enforcing lender and other creditors will lodge their claims to the enforcement officer based on their priority ranking. The borrower has several remedies available during this process, allowing them to challenge enforcement actions and potentially delay or negate liquidation of the asset. However, where a pledge is created in accordance with Legislative Decree 17.7/13 August 1923, (applicable to credit institutions operating in Greece) or in instances of collateral securing bond loans issued under Greek law, the need for an enforceable title is waived, and the creditor can proceed directly with the public auction notice without the mandatory waiting period of three business days.

An exception to this process applies to the enforcement of financial collateral arrangements under law 3301/2004 transposing the relevant EU Directive into Greek law. Given the nature of the collateral assets (financial instruments, cash, credit receivables) and the parties involved (banking and financial institutions), appropriation is possible without the usual formalities.

Special capital markets rules apply to the process of enforcing against pledges on listed shares, pursuant to the Hellenic Capital Markets Commission (HCMC) Circular 28/15 February 2006 (as amended and in force) and the Athens Exchange (ATHEX) Rulebook. In this case, the enforcing lender must request that the HCMC approve the sale of the shares through an auction and appoint an ATHEX representative to conduct the auction, in accordance with ATHEX regulation provisions.

Law stated - 20 April 2024

Debtor-in-possession financing

Does your jurisdiction allow for debtor-in-possession (DIP) financing?

According to the provisions of the Greek Bankruptcy Code on rehabilitation procedures, any claim from financing provided to the debtor to preserve going concern status and ensure the continuation of its activity and payments, the preservation or increase of its assets (DIP), is considered as senior general privilege and ranks above all other creditors of the debtor's estate. In that sense, DIP financing is acknowledged.

Law stated - 20 April 2024

Stays and adequate protection against creditors

During an insolvency proceeding is there a general stay enforceable against creditors? Is there a concept of adequate protection for existing lien holders who become subject to superior claims?

The tools available and the rules applicable to a stay on enforcement vary depending on the chosen insolvency tool.

In an out-of-court workout, enforcement measures are suspended from the final submission of the borrower's application until the process is completed, except for auctions scheduled within three months of the application submission.

For a rehabilitation agreement entered into and ratified pursuant to the Greek Bankruptcy Code, provisional measures may be granted following application to the court, with the possibility of pre-submission provisional measures if supported by creditors representing 20 per cent of the company's debts confirming that negotiation of a rehabilitation agreement is in progress.

In regular bankruptcy procedures, enforcement acts are suspended upon submission of the relevant application to the court. After bankruptcy declaration, creditors cannot enforce against the bankrupt. However, secured creditors may proceed with enforcement within nine months of the court decision declaring bankruptcy during piecemeal liquidation.

In addition to the enforcement suspension provided by law, standstill arrangements can be validly entered into between the relevant parties noting that these arrangements will only have a contractual, relative effect.

Law stated - 20 April 2024

Clawbacks

In the course of an insolvency, describe preference periods or other reasons for which a court or other authority could claw back previous payments to lenders. What are the rules for such clawbacks and what period is covered?

Clawback of prejudicial acts in insolvency: under Greek insolvency law, certain acts of a debtor are subject to annulment if executed during the suspect period, defined as the interval from cessation of payments to the declaration of bankruptcy, or within six months prior to the suspect period.

- Mandatory annulment: the following acts are subject to mandatory annulment: donations by the debtor and payment of debts not yet due (early repayment).
- Optional annulment: the bankruptcy administrator may annul any act or payment of due debts post-cessation of payments and pre-bankruptcy declaration if the counterparty was, or should have been, aware of the resultant prejudice to creditors.
- Annulment for fraudulent conveyance: acts executed within five years preceding bankruptcy, with the intent to harm creditors or prefer certain creditors, are annullable if the third party involved knew of the debtor's intent.

Law stated - 20 April 2024

Ranking of creditors and voting on reorganisation

In an insolvency, are creditors ranked? What votes are required to approve a plan of reorganisation?

There are specific provisions in the Insolvency Code that are applicable depending on the process chosen. These provisions operate in conjunction with the provisions of the Code of Civil Procedure regarding the ranking of creditors. The key parameter for ranking is the type of privilege held by each creditor.

For a rehabilitation agreement to be ratified, the debtor and its creditors representing more than 50 per cent of the claims with special privileges and more than 50 per cent of the other claims, in each case of those affected by the rehabilitation agreement, must consent. Alternatively, for a rehabilitation agreement to be approved the consent of the creditors representing more than 60 per cent of all claims against the debtor and more than 50 per cent of the claims with special privilege is required (under further certain rules).

Law stated - 20 April 2024

Intercreditor agreements on liens

Will courts recognise contractual agreements between creditors providing for lien subordination or otherwise addressing lien priorities?

Intercreditor agreements are a common practice in Greek financings and generally replicate standard Loan Market Association or English law provisions (even if not governed by English law as such). These arrangements have a contractual effect in the sense that they can be enforceable among the parties thereto and a court may recognise the rights of a party to an intercreditor agreement against another. Intercreditor agreements may not cut across erga omnes procedures, such as asset liquidation via court-driven enforcement through mandatory auction in the sense that the ranking of creditors is obligatory under the Greek Civil Procedure Code. Similarly, an intercreditor may not by itself alter the lien ranking of registered real estate collateral. In all these instances, it is for each relevant party to take such actions or make such payments as required to give effect to the intercreditor contract's provisions even where mandatory procedural provisions of law have resulted otherwise.

Law stated - 20 April 2024

Discounted securities in insolvencies

How is the claim of an original issue discount (OID) or discount debt instrument treated in an insolvency proceeding in your jurisdiction?

There is limited, if any, Greek precedent or legal literature addressing the point, especially in light of the size of the market. Greek businesses that have issued debt instruments over the years (especially prior to 2020) often used indirect structures, where the note was issued by

a foreign subsidiary and guaranteed by the Greek parent so Greek laws would not apply on the bankruptcy of the foreign issuer. Among the more recent trend of direct issuances, there is no known issuer to have gone insolvent. By way of general principle, creditors are generally called to lodge the claims before the bankruptcy court and evidence the amount they seek to be repaid, then the bankruptcy officer verifies the claims and issues a creditors' ranking table specifying the amount payable to each from the liquidation on the bankruptcy estate.

Law stated - 20 April 2024

Liability of secured creditors after enforcement

Discuss potential liabilities for a secured creditor that enforces against collateral.

Greece, being a continental jurisdictional system, applies general principles of good faith and bona mores (including concepts such as contributory fault or the obligation to mitigate damages). On such basis, the conduct of creditors will be considered in light of such benchmarks regardless of what the wording of covenants, warranties or waivers in transaction documentation.

Liabilities that are inherent to the ownership of an asset, as is the case with real estate or environmental liabilities, presuppose appropriation of the asset or otherwise the creditor taking ownership of the asset although there is some limited legal theory implying liability could be argued where the creditor was aware of legal or factual defects of the pledged asset.

Law stated - 20 April 2024

UPDATE AND TRENDS

Proposals and developments

Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? If so, please give a reference to any written material, whether official or press reports. Are there any other current developments or trends that should be noted?

No proposals at this time.

Law stated - 20 April 2024

LAW STATED DATE

Correct on:

Please state the date on which the law stated here is accurate.

No updates at this time.

Law stated - 20 April 2024