

Experience and incisive advice

Intuition and advice in getting to grips with essential corporate issues in 21st Century Greece – courtesy of KLC law firm



» Greece, Europe's oldest country, situated at the historic border between East and West, today has one of its fastest evolving economies. Nowhere is this more apparent than in the development of a new corporate law, arising tax issues and in the implementation of the EU's Markets in Financial Instruments Directive, MIFID. So what are these somewhat complex issues that potential investors and shareholders need to understand?

The new corporate law

The new Greek law on Companies Limited by shares is a huge leap forward in reduced bureaucracy and state administrative intervention. The new corporate law has several main features that all Greek companies and their shareholders should be aware of.

These are, indicatively;

i) *Flexibility in the incorporation and operation of a company:* The Greek regulatory structure used to be very bureaucratic. No more; especially, for companies having a share capital up to €3m, namely the majority of Greek companies, which can now be set up within one day, by just one person, a sole shareholder, whereas before it had to be at least two. Furthermore, the state administration may no longer recall the company's license which now falls under the competence of the courts following petition of whoever has legal interest. This provision is very practical especially in case of 50–50 shareholdings that are no longer able to continue operating since no decision can be taken thereof.

ii) *An enhancement of minority shareholder rights:* The share minority is strengthened, among others, through decrease of the percentages required for exercising a number of its rights. A typical example is that the right to information on company affairs to be provided by the Board of Directors, may be now exercised by a sole shareholder irrespective of its shareholding (instead of five percent of the paid up share capital under the previous status).

iii) *Squeeze-out and sell-out rights:* In case a shareholder acquires, after the incorporation of the company, 95 percent of its shares, the said shareholder has the right to squeeze-out the minority's shares, whereas the minority has the right to sell out its shares to the majority shareholder.

iv) *Various provisions may now be added to the Articles of Association, e.g. Share buybacks:* The company may now acquire its own shares up to the 1/10 of the paid-up share capital.

v) *Simplification to the Company Bodies operation:* Both General Assembly and Board of Directors meetings may now be held through teleconference or outside of Greece. Furthermore, the drawing up and signing up of the minutes by all the members of the BoD is now equal to a BoD decision, even without an actual former meeting having taken place. In addition, the Chairman may now have a casting vote which helps the BoD to reach decision in case it consists of even number of members.

The tax implications of the new law

As far as tax is concerned, there's just one area where there might be some impact. It has to do with valuations within the company law upon a capital increase or a merger, split etc.

These valuations used to be performed by a government body known as the 'Article 9 Committee' who historically opted for lower valuations, to be on the safe side.

Today, the new law stipulates that when making a valuation, there must be a focus on market value. Secondly, for the first time, there is an option for companies to have the valuation done by either a Certified Auditor or a 'Sworn-in Valuer' as an alternative to the Article 9 Committee.

The most important issue here is whether this new alternative procedure will apply to tax-neutral mergers. If the Greek Tax Authorities decide that it does, this will create tax optimisation opportunities for taxpayers who have undervalued assets on their B/S.

MIFID – and what it means for Greece

Market in Financial Instruments Directive (MiFID) is important for Greece because it has set in motion since the beginning of 2008, the operation of a new alternative market ENA (equivalent to London's AIM) for small and medium sized companies, to stand alongside the Athens Stock Exchange, the main, regulated market in Greece (like the London Stock Exchange).

It is anticipated that many construction or services or software firms, particularly construction firms working in the Balkans will want to join ENA and we expect ENA to be a good competitor to other alternative markets in Europe, including London's AIM and the Neuer Market in Germany.

MIFID strengthens cross-border competition and investor protection through greater transparency in the areas of portfolio management, investment advice and execution-only business. Unlike before, transactions will be happening outside the stock exchanges and across borders on the basis of common group of rules in the EU.

For example, qualified securities firms or financial institutions may choose to sell securities to each other's clients rather than through the stock exchanges. This requires stringent provisions on transparency and the provision of information – all of which require a careful legal eye.

Why KLC Law can help

KLC is very competitive in the competences of Greek corporate law, its tax implications and in the implementation issues of MIFID. That's because these areas require a fast-evolving expertise. Together with KLC's long acquisition of experience that comes from a well-established law firm and an exciting multi-national client base, the firm is well-placed to offer clients uniquely incisive advice. ☛

A choice for strong, stable returns

Investing in the Greek real estate market with local experts – KLC law firm

» *The real estate market in Greece* is a constantly growing market which has started to attract the interest of a significant number of Greek and foreign nationals. This has mainly happened in the aftermath of the Olympic Games and in the few years beforehand. During that time there was a significant boom in construction works and in the development of infrastructure projects – principally in transportation and new road networks. What supported all the above was a more and more flexible and efficient public administration and the amendment or modernisation of the relevant legislative framework. That helped to activate, facilitate and accelerate the rate of Greek real estate growth.

Moreover, Greece lies at the juncture of Europe, Asia and Africa, being not only the commercial crossroad of three continents, but also the country with the most extensive coastline among all Mediterranean countries with a large number of islands. It has, therefore, a strategically advantageous geographic position for many investors.

All the above parameters motivate national, EU and international investors to invest in and become familiar with all types of real estate offered by the Greek market. For example, office space, logistics real estate, residential real estate, leisure centres (shopping malls), holiday properties situated in vacation destinations, mainly the Greek islands but also in the mainland and finally industrial properties.

Today, the Greek property market is mainly orientated to investments intended to cover the commercial needs of an entity or joint venture. These investments are currently considered to yield a higher rate of return and involve less risk relatively to other investments (for example, in banking products or financial instruments, and so on). On the other hand, residential property, intended to cover the everyday needs of individuals or families ranks second in the interest of investors who lead the property market.

An indicative reason for this could be the ongoing increase of the so called objective values (in other words, fixed or standard values set by Greek legislation) that renders the acquisition of residential property less and less attractive to individuals and families, who, therefore, prefer to lease their home rather than purchasing it.

Factors to watch

When deciding to invest in Greek real estate one should know that each type of real estate investment will entail adherence to the relevant

legislation. This includes property law, town planning legal provisions and tax legislation, just to mention a few. More specifically, one should ensure that there are no problems with the title deeds, inheritance issues, town planning regime and archaeological, protected forest or other land uses of the area. Investors should also consider the relevant tax incentives or restrictions legally stipulated in order to achieve the optimal financing solution. No question, making the right choice in real estate also means undergoing a thorough analysis of the complex legal framework.

That's why a potential investor in Greek real estate should conduct a full legal and technical due diligence before going ahead. For example, an investor who wishes to invest in a vacation resort on a Greek island, has to examine the status of the area in which they are interested with regard to the determination of the seashore zone. If a thorough legal examination of the status of the property does not take place and the said property is found to be situated within the seashore zone, the investor might have to face even the inexistence of proprietary rights on the whole property or part of it.

Securing real estate investments with KLC law firm

KLC Law Firm is a long-established and renowned law firm which has developed deep expertise in real estate issues over the years. It has managed to grow together with its network of colleagues (civil engineers, real estate agents, tax and financing consultants, public notaries, and so on) its client base by helping them make profitable strategic choices. ♣





Energy analysis

The security of energy supplies – and its interconnection with the creation of a common European regulator

» The recent publication of the Commission's Third Energy Package Proposals is the latest important addition to the EC Green Paper on a 'European Strategy for Sustainable, Competitive and Secure Energy.' These proposals mainly purport to create a more unified legal and institutional framework for stimulating open competition in the internal energy market and as well to diversify Europe's energy mix in a rapidly changing economic environment. In order to achieve this objective, the Commission proposes to create a new independent body that would serve as a nascent EU-wide energy regulator with a monitoring and enforcement role in matters affecting energy liberalisation, competition, consumer protection and security of supply. Although all these issues are undoubtedly inter-related, our brief focus here shall be centred on the necessity for establishing such a regulator in order to secure Europe's long-term energy supplies and to diversify its increasing energy import dependency.

At present, security of energy supplies and diversification is usually within the remit of private companies (often with the tacit assistance of member-states and the EU). In each member-state there also exist national regulators, who supervise the availability of access to energy networks for all market players. Furthermore, in certain markets (such as the electricity sectors of Scandinavia and France-Belgium-Netherlands), there are in place 'market-coupling' arrangements, which have increased the inter-dependence of regional markets and their respective regulatory agencies.

However, there exists widespread consensus that all these players and institutions cannot by themselves guarantee Europe's energy future. For instance, market mechanisms or private enterprises alone cannot safeguard the operation of an efficient energy market or evaluate the overall long-term economic and geo-political implications of Europe's energy security. National regulators, on the other hand, have no authority to foster a comprehensive pan-European energy

security framework or to tackle some fundamental energy concerns, such as the improvement of existing inter-connectors between different regional markets, or the setting-up of a European interconnection plan. Likewise, coupling arrangements cannot facilitate EU-wide market integration due to their regional character and because their operation is based on voluntary guidelines, which cannot be effectively monitored and enforced.

In contrast, the introduction of a pan-European regulator would play a vital role in integrating the physical and financial energy markets within the EU and in guaranteeing Europe's energy supply lines. For instance, the setting-up of such a regulator would:

- Promote the replacement of the existing national and regional markets with a single, fair and efficient EU-wide in which uniform, transparent and binding rules shall apply;
- Contribute to the availability of any necessary investments in cross-border interconnection capacity;
- Facilitate the energy exchanges across national borders;
- Enhance the fair and efficient allocation and pricing of transmission capacity among all market participants; and
- Increase collaboration between transmission system operators and member-state regulators.

More importantly, such a regulator would help the EU to negotiate in its external energy policy with one voice in discussions with producers and suppliers. This would enable Europe to make discretionary choices as to how to achieve diverse supply routes, to spread its energy dependence across different suppliers and to manage diversification in a more efficient and coherent manner.

From this brief analysis it is apparent that the creation of a EU-wide energy regulator is virtually inevitable. Developments in the coming months and years will determine what shape this regulator shall take and to what extent each member-state shall be required to surrender its institutional sovereignty in energy regulation. ♣