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BRIEFING

FOCUS ON GREEK CORPORATE PRACTICE: RELATED-PARTY TRANSACTIONS

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The regime for approval of related-party transactions with Greek sociétés anonymes (S.A.) companies has been significantly amended with the entry into force of the new Law 4548/2018.

The definition of related-party transactions has been broadened, as compared to the previous regime and now includes any agreement with a related party, as well as the provision of security or guarantee in favour of a third party for the benefit of a related party. What or who is a related party has not altered from the previous regime[1], and includes:

a. For listed companies, related persons in accordance with IFRS 24 and legal entities controlled by such persons in accordance with IFRS 27;
b. Board members, persons exercising control over the company, close family members of such persons and legal entities controlled by such persons; and
c. Persons designated as such under the articles of association of the company.

In brief, the new regime sets out a more flexible framework for the approval of related-party transactions, giving the Board of Directors the principal authority to

[1] Although the wording of the relevant provision of law 4548/2018, i.e. sub-para. (στ) of para. 3 of article 99, as amended by virtue of law 4587/2018, creates ambiguity as to whether the entire sub-paragraph or merely the provision related to the "fairness opinion" report applies to listed companies only, the purpose that this provision aims to achieve, in conjunction with the previous regime and the wording of the article as it stood prior to its amendment by virtue of law 4587/2018, leads to an interpretation that this exemption applies to both listed and non-listed companies, with the "fairness opinion" requirement applying to listed companies only.

decide whilst enhancing the rights of minority shareholders to demand that the matter should be referred to the General Meeting of Shareholders.

The new regime in relation to non-listed SA companies can be summarized as follows:

- **General**: As a principle, related-party transactions are prohibited unless the prior approval of the competent corporate body has been obtained, such approval being also subject to publication formalities;
- **Competence of the Board of Directors**: The Board of Directors is primarily competent to approve any related-party transaction (unless the Articles of Association provide that the General Meeting must give its approval);
- **Conflict of interest**: Board members having a conflict of interest are not entitled to vote on the specific topic. A conflict of interest exists when a related-party transaction is in conflict with the interests of a director or a legal entity owned or controlled by such director or by a related person linked to that director;
- **Competence of the General Meeting of Shareholders**: The approval of a related-party transaction may be referred to the General Meeting of Shareholders in the event that: (a) the minority shareholders representing at least 5% of the company's share capital requests a General Meeting in order to resolve on the topic; or (b) a quorum of the Board of Directors cannot be achieved due to a conflict of interest applying to one or more members of the Board. This latter may arise frequently in practice, particularly if the Board members of the approving company are also members of the Board of the related party;
- **Publication formalities**: The resolution approving the related-party transaction must be published with the General Commercial Registry prior to the conclusion of the transaction. The minimum contents of the approval include: (a) the nature of the relationship between the company and the related party; (b) the date and value of the transaction; and (c) any other information justifying that the transaction constitutes a fair and reasonable action for the company and any other non-related party, including its minority shareholders.

The above publication formalities also apply in the event of a transaction to be concluded between a related party to a company and that company's subsidiary; and

- **Validity of the approval**: An approval for the entry into a related-party transaction shall be deemed valid after: (a) the expiry of a 10-day period from publication of the approval granted by the Board of Directors (during which no request for convocation of a General Meeting was made by the minority shareholders); (b) the General Meeting of Shareholders' resolution (if the matter has been referred to the latter for the reasons specified above); or (c) a written declaration of all shareholders that they do not intend to request the convocation of a General Meeting in order to resolve on such matter.

For listed SA companies, the law specifies the following additional requirements:

- In the event that the approval for the entry into a related-party transaction has been referred to the General Meeting of Shareholders, the shareholder having a conflict of interest in relation thereto shall not participate in the voting process and shall not be taken into account for the establishment of quorum; and

- The satisfaction of the "fairness" criterion must be assessed by virtue of an auditor's or independent third party report (fairness opinion).

Exemptions from the obligation to obtain an approval

No approval shall be required for:

- Day-to-day transactions of the company;
- Agreements for the remuneration of directors, members of the Board, officers etc.;
- Agreements made by credit institutions relating to measures for maintaining their financial stability;
- Agreements with or provision of security/guarantee for the benefit of a 100% subsidiary;
- Agreements with shareholders, provided that (a) all shareholders are given the opportunity to enter into an agreement with the same terms, and (b) the equal treatment of shareholders and the interests of the company are safeguarded; and
- Downstream agreements or security/guarantees, provided that either (a) these are beneficial to the company, its subsidiary and its non-related party shareholders, or (b) their rights are not jeopardised. The satisfaction of such criterion shall be assessed by virtue of a "fairness opinion" report made by an auditor or an independent third party, and reference to such report shall be made in the company's financial statements (such requirements being applicable to listed companies only[2]).

In summary, the approval of transactions between entities within the same wholly-owned group should be simplified by this new procedure – with the exception of transactions between companies with overlapping Boards.

[2] Although the wording of the relevant provision of law 4548/2018, i.e. sub-para. (στ) of para. 3 of article 99, as amended by virtue of law 4587/2018, creates ambiguity as to whether the entire sub-paragraph or merely the provision related to the "fairness opinion" report applies to listed companies only, the purpose that this provision aims to achieve, in conjunction with the previous regime and the wording of the article as it stood prior to its amendment by virtue of law 4587/2018, leads to an interpretation that this exemption applies to both listed and non-listed companies, with the "fairness opinion" requirement applying to listed companies only.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.

VIRGINIA MURRAY
Partner
Athens

T +30 210 4557300
D +30 210 455 7303
M +30 694 998 1046
vmurray@wfw.com

VALINA GIOUZELAKI
Associate
Athens

T +30 210 4557300
D + 30 210 455 7348
M + 30 69 4475 6875
vgiouzelaki@wfw.com

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