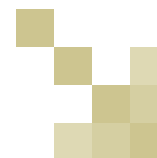


Greece

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MARKET

1. Please describe briefly the venture capital market in your jurisdiction, in particular:

- How it is distinguished from private equity.
- The sources from which early stage companies obtain funding.
- The types of companies that attract venture capital investment.
- Market trends (for example, levels of investment, the type of companies invested in and where those companies are located).

Venture capital and private equity

The Greek venture capital market does not rely on local structures or Greek legislation. Even when funds are of Greek origin, they follow structures and arrangements that are driven by foreign jurisdictions, primarily those with tax incentives.

It is often difficult to distinguish between private equity and venture capital. However, most of the venture capital in the Greek market is dominated by private equity funds.

Sources of funding

Credit institutions dominate the funding of both start-ups and restructurings. However, the funding of start-ups is rather infrequent in practice.

Types of company

Venture capital investment targets both types of corporations known to continental jurisdictions, that is:

- Companies limited by shares or *sociétés anonymes* (*Anonymi Etaireia*) (AE).
- In very few cases, companies with limited liability (*Etaireia Periorismenis Efthinis*) (EPE).

Market trends

The last five years have seen the rise of various venture capital funds in Greece and a considerable number of venture capital investments in various sectors. Investments are usually of a medium size and range from EUR2 million (about US\$2.5 million) to EUR10 million (about US\$12.7 million). The recent economic and credit crisis puts in doubt whether this trend will continue.

2. What tax incentive schemes exist to encourage investment in venture capital companies? At whom are the schemes directed? What conditions must be met?

Both the first law on venture capital investments in Greece (*Law no. 1775/1988 regarding the Venture Capital Sociétés Anonymes*) and its amending law (*Law no. 2367/1995 on Companies of Mutual Investment - Factoring - Leasing*) failed to encourage venture capital investments as intended. Most venture capital investments in Greece have used foreign offshore funds. This is because the offshore jurisdictions from which these funds originate can provide tax incentive schemes that cannot be accommodated by Greek tax and corporate legislation.

Law no. 2992/2002 on closed-ended venture capital mutual funds (*Law 2992/2002*) has introduced some tax incentive schemes. Venture capital mutual funds are not subject to any tax (*Article 7(21), Law 2992/2002*). Only the unit holders of the fund are liable to pay tax as co-owners of the assets belonging to the fund. In addition, the transfer or any transaction on the units of the fund is taxed the same way as the corresponding transaction on the related unit in connection to the assets contained in the fund. For example, if the fund contains only shares in Greek-listed corporations, then any sale of the unit in connection with this underlying asset should be taxed in the same manner as the sale of Greek-listed shares. Therefore, for the sale of units acquired before 1 April 2009 the sale is subject to tax at a rate of 0.15% calculated on the sales price, whereas the sale of units acquired on or after 1 April 2009 is subject to a capital gains tax at a rate of 10% on any difference between the purchase and sales price. The acquisition of units in the fund does not in itself mean that the unit holder obtains Greek residence or permanent establishment for tax purposes. In addition, for the establishment and management of a venture capital mutual fund, as well as the payment of the participation of the unit holders, no tax, duties, stamp duties, contributions and rights in favour of third parties can be imposed (*Article 7 (22), Law 2992/2002*). However, this provision again failed to make an impact on how venture capital investments are made in Greece and failed to reduce the frequency of the use of offshore jurisdictions.

3. From what sources do venture capital funds typically receive funding?

Venture capital funds typically receive funding from either credit institutions or from investors who participate in these fund(s) and have committed to finance the purposes of the fund(s).

4. Can the structure of the venture capital fund impact on how investments are made?

The structure of the venture capital fund may, in theory, impact on how investments are made. In particular, the tax structure and the existence of bilateral treaties for the avoidance of double taxation between the jurisdictions that are involved in the venture capital investments can make a difference and determine how an investment will be made.

5. Do venture capital funds typically invest with other funds?

Venture capital funds do not typically invest with other funds.

FUND FORMATION AND REGULATION

6. What legal structure(s) are most commonly used as vehicles for venture capital funds in your jurisdiction?

Possible legal structures for venture capital funds are the following:

- Venture capital companies (EKES) in accordance with Law no. 2367/1995.
- Closed-ended venture capital mutual funds (AKES) in accordance with Law no. 2992/2002.
- Ordinary *sociétés anonymes* in accordance with Greek codified Law no. 2190/1920.

However, local vehicles are infrequently used and offshore vehicles dominate the local market.

7. Do a venture capital fund's promoter, manager and principals require licences?

No such licences are required under Greek law.

8. Are venture capital funds regulated as investment companies or otherwise and, if so, what are the consequences? Are there any exemptions? Include, in the answer, any restrictions on how a venture capital fund can be marketed or advertised (for example, under private placement or prospectus rules).

Venture capital funds are not regulated as investment companies. There are no restrictions for the marketing or advertising of these funds. Exceptionally, however, there are some restrictions relating to listed funds, which must follow the rules applicable for companies listed on the Athens Stock Exchange.

9. How is the relationship between investor and fund governed? What protections do investors typically seek?

Given that non-Greek structures are generally chosen, the relationship between investor and fund is governed by non-Greek legislation, which usually offers a higher degree of flexibility as regards corporate governance, shareholders' agreements and exit strategies. Investors typically seek a satisfactory return on an investment, which is usually safeguarded by warranties, put options (see *Question 20*) and personal guarantees of the shareholders of the investee company.

10. What are the most common investment objectives of venture capital funds (for example, what is the average life of a fund, what return will a fund be looking for on its investments and what is the time frame within which a fund would seek to exit its investment)?

The average life of a fund is usually between five and ten years. A reasonable rate of return which a fund typically expects from its investments varies from approximately 25% to 30%. The time frame within which a fund would seek to exit its investment usually ranges from three to five years.

INVESTMENTS

11. What form of investment do venture capital funds take? (For example, equity, debt or a combination.)

Venture capital funds normally opt for a combination of both equity and debt in the form of loans, debentures, and bonds.

12. How do venture capital funds value an investee company?

Venture capital funds follow standard procedures of valuation, yet the dynamics of the economic sector and the industry from which the investee company comes are crucial for projecting future returns and assessing the company's good will and prospects.

13. What investigations will venture capital funds carry out on potential investee companies?

Venture capital funds carry out the usual legal, financial and, if necessary, technical due diligence that is undertaken in any mergers and acquisitions (M&A) exercise.

14. What are the principal legal documents used in a venture capital transaction?

Standard M&A documentation is used in venture capital transactions. However, if the investee company is a public one, Greek Law no. 3461/2006 on public takeover bids requires takeover documentation that summarises the terms of the takeover bid. It includes in particular the:

- Details of the target company, the offeror and the adviser.
- Securities that are being targeted.
- Total number of securities that the offeror assumes or is obliged to acquire.
- Takeover price.
- Minimum number of securities.
- Number of securities held by the offeror.
- Offeror's intent to acquire shares until the date of acceptance.

Additionally, a prospectus should be produced to provide at least the following:

- The terms of the public offer.
 - The name and registered office of the target.
 - The name and registered office of the bidder or, if the bidder is a legal entity, its name, type and registered office.
 - Details of the bidder's financial adviser including its name, registered office and address.
 - Details of the persons responsible for drafting the offer document, including their names and relation to the bidder, as well as a declaration by them that the prospectus is complete, that the data contained in it are real and that there are no omissions that might distort its content or the essence of the offer.
 - The securities or the class of securities for which the offer is made.
 - The maximum percentage of securities the bidder commits or is under an obligation to acquire, their percentage in relation to the share capital of the target and in relation to the total amount of securities of the same class.
 - The minimum percentage of securities which, in a voluntary offer, must be accepted for the offer to come into force.
 - The securities or the class of securities of the target that the bidder or persons acting on its behalf or in concert with the bidder already hold, directly or indirectly.
 - Any intention of the bidder to acquire additional securities of the target, apart from those that will be offered, during the period commencing when the offer is made public and ending when the offer closes for acceptance.
 - The consideration offered for each security or for each class of securities, the particulars of payment and, in a mandatory offer, the method employed in determining the consideration.
 - If securities are offered as consideration, full details of the securities, including their rights and their issuer.
 - Every pre-condition that the Hellenic Capital Market Commission has set for the offer.
 - The starting date and end date of the acceptance period.
- The actions the target's shareholders must take to accept the offer, the procedure they must follow to fulfill the obligations undertaken in the acceptance or to revoke the acceptance, and the procedure for the transfer of the securities and receipt of payment.
 - The bidder's business plans for the continuation of the activities of the target and the offeror, as well as in relation to the employees of the target.
 - Any special agreements concerning the offer or the exercise of the rights attached to the securities of the target that the bidder or persons acting on its behalf or in concert with the bidder already hold, directly or indirectly.
 - Any other condition of the offer.
 - Details (including the type of transaction, number of securities, price and date) of any trades effected by the bidder or persons acting on its behalf or in concert with the bidder on the target's securities within 12 months preceding the announcement of the offer.
 - Information about the financing of the offer.
 - The identity of persons acting on behalf of the bidder or in concert with it or with the target and, in case of legal entities, their type, name, registered office and their relation with the offeror and the target.
 - Detailed report of the share structure and the shareholdings of the bidder in affiliated or subsidiary companies.
 - The law governing the legal relation between the bidder and the target's shareholders, as well as the competent courts.
 - The compensation offered for the rights removed as a result of the breakthrough rule (that is, any restrictions on the transfer of securities and/or on voting rights set out in the target's articles of association or in contractual agreements entered into after Statute 3461/2006 came into force, either between the target and holders of the securities or among holders of the securities, having no effect on the bidder) with a detailed reference to the particulars of payment and the method used for determining it.
 - The opinion of the bidder's financial adviser on the methods and procedure for safeguarding the obligations undertaken by the bidder towards the target's shareholders as well as the credibility of the offer.
 - When the consideration involves securities listed on a regulated market, the offer document must state the place where:
 - the most recent prospectus for those securities was made available;
 - the financial information published by the issuer of the securities according to the publication requirements was made available; and
 - the place where important announcements are made by the issuer.

- When the consideration involves securities not listed on a regulated market, the offer document must contain information on those securities equivalent to the information included in an offer document published when securities are offered to the public or admitted to trading, which enables the target's shareholders to form an opinion regarding the assets, the financial status, the results and the business prospects of the issuer.

In addition, the opinion of the target's board of directors is required for the completion of the takeover bid. It includes:

- The number of shares held or controlled, directly or indirectly, by the directors of the target.
- The board's intended actions with regard to the takeover bid.
- Any agreements between the target's board and the offeror.
- The management's justified views in relation to the takeover bid, referring specifically to the consequences of a successful takeover bid to the target's interests and those of its employees, as well as its views regarding the offeror's strategic plans for the target company.

Statements by credit institutions or investment services companies are also necessary. These statements confirm that the offeror has access to credit funds for the payment of the total amount of the payable consideration (in the event of cash offers) or owns or has access to the securities offered as consideration in the event of securities offers.

Finally, the declaration of acceptance is a necessary document, in which the shareholders of the target company declare that they accept the offer. In particular, the acceptance of the takeover bid is effected under a written declaration by the shareholders which is filed with credit institutions or investment services companies. Alternatively, the takeover bid may be accepted through the Central Depository of Securities by virtue of a written declaration.

15. What form of contractual protection does an investor receive on its investment in a company?

The contractual protection which the investor receives comprises several representations, warranties, covenants, guarantees and various pull and put options (see *Question 20*).

16. What form of equity interest does a fund commonly take (for example, preferred or ordinary shares)?

A fund usually opts for ordinary shares as a form of equity interest, although preferred shares are also possible.

17. What rights does a fund have in its capacity as a holder of preferred shares (for example, what rights to capital and/or to interest)?

Preferred shares provide the following preference rights (*Article 3(1) and (2), Greek codified Law no. 2190/1920*):

- A right related to the partial or total collection of the distributed dividend before ordinary shares.
- A right for preferential reimbursement out of the proceeds of the liquidation of the company's assets of the capital paid up by the holders of the preferred shares.
- A fixed dividend.
- The right to participate only partially in the profits of the company.
- The collection of a specific interest.
- The right for participation, by priority, in profits deriving from a specific company activity, as set out in the articles of association.
- Full voting rights, such as with ordinary shares, or without voting rights at all or with voting rights restricted to specific issues, as prescribed in article 3 (4) of Greek codified Law no. 2190/1920.

18. What rights are commonly used to give a fund a level of management control over the activities of an investee company (for example, board representation, certain acts of the company subject to investor consent)?

The articles of association may give specific shareholders the right to appoint board directors not exceeding one third of their total number (*Article 18(3), Greek codified Law no. 2190/1920 on Sociétés Anonymes*). This right must be exercised before the election of the board of directors by the general meeting of shareholders, which only elects the remaining members of the board. Directors so appointed may be removed at any time by those having the right to appoint them and be replaced by others. In addition, on the petition of shareholders representing one tenth of the paid-up share capital, the President of the Court of First Instance of the district where the seat of the company is situated may remove any appointed director for a serious cause.

The articles of association of the investee company may also prescribe that specific decisions regarding the company's management can be taken not only by the board of directors, which is the competent company body for the management of the company (*Article 22(1), Greek codified Law no. 2190/1920*), but also by the general meeting of shareholders, which is the supreme company body (*Article 33, Greek codified Law no. 2190/1920*). These decisions are binding on all shareholders, even if certain shareholders are absent from the meeting or disagree.

It can be agreed that the consent of the investors is a necessary prerequisite for certain decisions of the board of directors to be valid. However, these agreements should be part of a shareholders' agreement, the breadth and validity of which are still to be tested under Greek case law. In any case, shareholders' agreements cannot be integrated into a company's articles of association. Indeed, articles of association, including corporate governance arrangements, cannot in Greek law be shaped as freely and flexibly as they can in common law jurisdictions.

19. What restrictions on the transfer of shares by shareholders are commonly contained in the investment documentation?

The issue of so-called “blocked” registered shares whose transfer depends on the approval of the company, may be stipulated in the company’s articles of association (*Article 3 (7), Greek codified law no. 2190/1920*). A relevant approval must be granted by the board of directors or the general meeting of the company. Possible restrictions to the transfer of registered shares may be either:

- The prohibition of the transfer, if the shares have not been previously offered to the rest of the shareholders or to some of them (right of first refusal).
- The designation by the company of a shareholder or third party to whom shares will be transferred if a shareholder wishes to transfer his shares.

In either case, if such restriction is not exercised within a certain time period, the transfer of shares becomes unrestricted. Transfers of blocked shares made in breach of the provisions of the articles of association are invalid.

Only the shareholder can pledge his own shares or put encumbrances on them. If another person, without the owner’s previous consent, pledges or transfers shares or other securities they can be punished by imprisonment (*Article 63a, Greek codified Law no. 2190/1920*).

20. What protections do the investors, as minority shareholders, have in relation to an exit by way of sale of the company (for example, drag-along and tag-along rights)?

When it comes to exit options, minority shareholders may opt for tag-along rights (that is, the contractual obligations used to protect them in case the majority shareholder sells his stake). Then, the minority shareholder has the right to join the transaction and sell his minority stake in the company. Minority shareholders may also use put options (that is, option contracts giving them the right, but not the obligation, to sell a specified amount of securities at a specified price within a specified time). The enforcement of these provisions, however, may not be as smooth as in other jurisdictions. This is because:

- Firstly, court proceedings to enforce such provisions can be very time-consuming.
- Secondly, Greek courts are quite unfamiliar at dealing with such commercial agreements.

21. Do investors typically require pre-emption rights in relation to any further issues of shares by an investee company?

Investors typically seek pre-emption rights in relation to any further issues of shares by an investee company. However, unless the company’s articles of association provide to the contrary, these pre-emption rights are provided for in Article 13 (7 to 11) of Greek codified Law no. 2190/1920. In particular, in every case of an

increase of share capital which is not made through contribution in kind or issue of bonds that are convertible to shares, a pre-emption right is granted for the full amount of the additional capital or the bond loan, in favour of shareholders at the time of the issue in proportion to their participation in the existing share capital.

However, the articles of association may extend this preference right to cases of increase through contributions in kind or through the issue of bonds convertible to shares. This preference right must be exercised within the term provided by the corporate body which decides the increase, that is, the general meeting or the board of directors. This term cannot be shorter than 15 days from the decision on the increase. After the end of this term, shares which have not been subscribed are made available at the free discretion of the board of directors. The invitation to exercise the preference right, in which the term for the exercise must be stated, is published in the *Government Gazette*.

22. What consents are required to approve the investment documentation?

Depending on the company’s representation powers, the investment documentation must be approved by the board of directors and/or the general meeting of shareholders. Board resolutions and decisions of the general meeting specify the terms and conditions of the investment and define the competent person for the signing of the investment documents.

23. Who covers the costs of the venture capital funds?

Although it can be a matter of agreement between the parties, the transactional costs of the venture capital funds are usually covered by the investee company, if negotiations result in an investment.

FOUNDER AND EMPLOYEE INCENTIVISATION

24. In what ways are founders and employees incentivised (for example, through the grant of shares, options or otherwise)? What are the resulting tax considerations?

The general meeting of shareholders may decide to give shares to members of the board of directors, to employees or to other persons who provide services to the company on a regular basis in the form of an option for the acquisition of shares (stock-options) (*Article 13(13), Greek codified Law no. 2190/1920*). In this case the nominal value of shares cannot exceed one-tenth of the paid-up capital on the date of the decision of the general meeting. In addition, the general meeting, through its decision, can authorise the board of directors to establish a programme for the offering of shares within five years (*Article 13(14), Greek codified Law no. 2190/1920*).

In relation to the tax imposed on stock-options, a tax is imposed when the employee exercises the right and not during the vesting period (*Article 45(1), Greek Income Tax Code, as recently amended by Greek Law no. 3697/2008*). This recent legislative provision aims to increase the issuance of stock-options.

25. What protections do the investors typically seek to ensure the long-term commitment of the founders to the venture (for example, good leaver/bad leaver provisions and restrictive covenants)?

Protections typically available in common law jurisdictions (that is, good leaver/bad leaver provisions and restrictive covenants), are not available in Greece because they are considered to excessively restrict financial freedom. In fact, even if agreed, it is questionable whether they would be held admissible in court, regardless of whether the parties agreed to be subject to, for instance, English law. This is particularly so for employment contracts, because according to Article 6(1) of the Rome Convention on the law applicable to contractual obligations (1980/934/EEC) (ratified by Greece) and according to Regulation 593/2008 on the law applicable to contractual obligations (Rome I) (in force for all member states) in a contract of employment a choice of governing law made by the parties cannot deprive an employee from the protection afforded to him by the mandatory rules of the law which would be applicable in the absence of choice. Under Greek law, good leaver/bad leaver provisions and restrictive covenants of the kind typically found in Anglo/American venture capital documentation will not be tolerated by Greek courts.

EXITS

26. What forms of exit are typically used to realise a venture capital fund's investment in an unsuccessful company? What are the relative advantages and disadvantages of each?

In an unsuccessful company, a venture capital fund will typically seek to exercise put options and, if the investee company does not have adequate assets to allow the full exercise of a put option, make use of the personal guarantees given by the shareholders of the investee company. However, it cannot always be certain that there will be collateral security, because the personal assets of the guarantor shareholder may still, at the time the put option is exercised, be insufficient to meet the claim of the venture capital fund. Interestingly, Greek courts have not as yet dealt with the exercise of these options and their accompanying personal guarantees.

27. What forms of exit are typically used to realise a venture capital fund's investment in a successful company (for example, trade sale, initial public offering and secondary buyout)? What are the relative advantages and disadvantages of each?

The trade sale is typically used to realise a venture capital fund's investment in a successful company. Initial public offerings are also an option, especially if the company enjoys impressive success, yet they are inevitably less frequent in practice. Although possible, management buy-ins are quite infrequent.

28. How can this exit strategy be built into the investment?

The exit strategy can be built into the investment and its documentation. However, problems may occur during the application of these strategies primarily because there can be no quick remedies if a contracting party refuses, for whatever reason, to co-operate at the time of exit. Indeed, the transfer of Greek shares is complete and valid only if the tax imposed in case of a share transfer gets paid (*Article 79(4), Greek Law no. 2238/1994*). If a shareholder, no matter what the contractual provisions are, does not co-operate for the conclusion of an exit, the transaction cannot be completed. Moreover, the commencement of proceedings, the issue of a judgment and its enforcement are a time-consuming process in Greece. Crucially, Greek courts have rarely, if at all, dealt with such cases and it is unclear what stance they will take when asked to review exit strategies under the scope of Greek law.

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