

Greece

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Share transaction restrictions in the Greek border area

For the sake of national security and national territorial integrity, Greece has adopted certain legislative transactional restrictions applying to specific areas of the Greek territory characterized by law as “border areas”. The main enactment regulating transactions

relating to the Greek border areas is L. 1892/1990, as in force following its latest amendment by L. 3978/2011.

L. 1892/1990 expressly prohibits any transaction for the acquisition of any right in rem or the establishment of any contractual rights pertaining to real estate property located in the border areas, as well as the transfer of shares or parts or the change of partners of any legal entity of any legal form owning real estate property in those areas. Such prohibition applies to individuals or legal entities of citizenship

other than, or seated elsewhere than, the EU and the EFTA member states. Any individual or legal entity subject to the above prohibitions may apply to the pertinent authorities for the lifting of the relevant prohibition. Breach of any of the above provisions renders the transaction null and void.

Compared to the previous legal framework, the above provisions raise certain crucial interpretational issues:

- Although under the previous legal framework transfers of listed shares were expressly excluded from the respective prohibitions, there is now no such explicit exclusion. This raises the question as to whether the legislator intentionally abolished such exclusion

aiming also to subject these transactions to the prohibition or whether the specific abolishment was inadvertent.

- It is not clear whether the nationality of a legal entity is judged as per its actual seat (that is, where its management is actually located, as opposed to its registered seat) solely or, on an ancillary basis, as per the nationality of its controlling entities; and, further, which is the prevailing criterion should an EU (or EFTA) nationality and that of a third country concur.

Unless there is a legislative initiative to interpret any of the above issues, only future case law could potentially offer such interpretation.

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