Greece: Private Company Briefing

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1 The minimum capital requirement of 1 euro was abolished by virtue of Law 4155/2013.

2 However, the company will still have to comply with the provisions regarding the annual financial statements and the distribution of profits and, in general, with all provisions intended to preserve the corporate assets corresponding to the company capital.

The growing need in Greece for a strong company form for medium-sized enterprises, which constitute the majority of Greek businesses, has led to the ability to establish a Private Company (in Greek *"Idiotiki Kefaleouchiki Etairia" or "IKE")*, by virtue of Law 4072/2012, which came into force on 11 April 2012 (the ''Act'').

Limited liability companies ("EPEs"), originally established to serve as an intermediate type between *sociétés anonymes* and partnerships, have not proved very popular mainly because of the outdated and cumbersome laws regulating them as well as the need for the extensive (and expensive) involvement of the notary public needed to complete, *inter alia,* share transfers, capital increases and amendments to the articles. According to the preamble of the Act, the creation of a new form of limited-liability company was considered vital for the modernization of Greek corporate law.

1.1 Structure

The Private Company operates as a corporation in the sense that its owners (called "partners") cannot be held personally liable for corporate debts (unless they provide guarantee contributions) with the difference that it may be set up without any capital investment[1]. Partners are given the opportunity to choose whether their company will be structured to resemble more a limited liability company or a partnership, by providing guarantee contributions, for example; in this case, the partners providing guarantee contributions could be held personally liable for corporate debts up to the amount of their contribution.

The capital of the Private Company is determined by the partners without limitation - it can even be zero euros. The partners participate in the company by capital, non-capital or guarantee contributions. This provision makes the company attractive as it allows cheap and simple incorporation[2].

1.2 Incorporation

The Private Company may be established by one or more partners. It is set up through the "One Stop Shop" procedure (established by Law 3853/2010) either by a private document or by notarial deed (if required by

law or chosen by the parties) and is registered with the General Commercial Registry.

The Private Company will be formally established upon its registration with the General Commercial Registry. The term of the Private Company must be fixed; if the articles of association (the "Articles") do not stipulate the company's term, it shall be 12 years from the date of its incorporation, although this may be extended. The name of the company will have the acronym "I.K.E." after its name in Greek and "P.C." following any English title.

The Act states that the Articles and its amendments, given that they are private documents, as well as any resolutions and minutes from partners' meetings are to be drafted in any of the official languages of the EU. The Act also provides that every Private Company must create a web page within a month from its incorporation, where it will post certain corporate information required by law.

1.3 Management

The Private Company is to be managed and represented collectively by all partners unless otherwise provided in its Articles. The partners are entitled to choose the management structure they find appropriate; in case of more than one administrator, the acts of management and representation are carried out collectively by all administrators unless otherwise stated in the Articles.

Urgent acts of management, the omission of which could cause substantial damage to the company, can be executed by any administrator upon relevant notification to any other administrators. Only individuals can be appointed as administrators and they can be held liable towards the company for any acts or omissions violating the law, the Articles or the partners' resolutions, as well as for management failures. In the event of statutory management, if one of the partners is a legal entity, it must appoint an individual as administrator on its behalf. In this case, the legal entity will be severally liable for the acts of management.

It should be noted that only the persons appointed as administrators (either by virtue of the company's Articles, by a resolution of the partners' meeting, or the sole partner of a single-member private company) are subject to compulsory insurance with the Social Insurance Organisation of Freelance Professionals ("OAEE"). Insurance is optional for all other partners, this is in contrast to the compulsory insurance of all partners in EPEs.

1.4 Partners' Meeting

The partners form the supreme corporate body and can decide on any corporate matter. The law cites specific matters that fall under the exclusive competence of the partners – such as the amendment of the Articles, the appointment or removal of an administrator, the approval of the annual financial statements, the distribution of profits and the dissolution of the company.

The resolutions of the partners are taken either through a general meeting or without a meeting if they are unanimous or in the event that all partners agree that a majority resolution may be passed without holding a meeting. Typically, the general meeting decides by simple majority of the number of share parts (or qualified majority in relation to those matters which require a qualified majority according to the Act), although in some cases the Act requires unanimity. However, the Articles can provide for higher majority for all or certain matters or even unanimity for some; it can also provide that all or certain resolutions will be taken by the majority of the number of partners,

representing the majority of the number of share parts (in these cases the majority must be of both number of partners and number of share parts).

It should be noted that the Act does not require a specific quorum for the resolutions of the Private Company's partner meetings.

1.5 Partners' contributions – Share parts

Each partner holds a number of share parts representing its contribution to the company. The initial number of share parts of each partner is set out in the Articles. The minimum nominal value of each share part is one (1) Euro. The share parts have the same nominal value regardless of the kind of contribution they represent (whether capital, non-capital or guarantee contribution). Each share part represents one form of contribution. The share parts can be pledged.

There are three types of partner contributions:

a. Capital contributions: these form the company's capital and are paid in cash, or in a non-cash form that can be assessed and represented in the balance sheet, such as the transfer of property or the assignment of claims. Any assessment is not mandatory for contributions with a value of less than €5,000.
b. Non-capital contributions: contributions that cannot be represented in the balance sheet, such as the obligation to perform works or provide services. Their value is determined in the Articles.
c. Guarantee contributions: contributions representing the assumption of liability for corporate debts towards third parties up to a certain amount as set out in the Articles. The partner is therefore a direct guarantor to the company's creditors for any amounts up to the maximum agreed. The partner providing the guarantee is deemed to have given the capital to the company. The value of each guarantee contribution is determined in the Articles, but it may not exceed 75% of the amount guaranteed by the partner. Partners who have provided guarantee contributions and paid the relevant debts do not hold a right of recourse against the company. The institution of guarantee contributions operates as an alternative mechanism for the protection of creditors.

Given that the contributions to the private company can constitute either capital or non-capital, the share parts are detached from the company's capital, instead they refer to the total value of the contributions. The partners may choose a purely capital structure with capital contributions only or a more personal structure with non-capital contributions and assumption of liability. The amount of the company's capital must be shown on its correspondence.

The share parts of a Private Company are freely transferable; however, share parts representing non-capital or guarantee contributions that have not been paid cannot be transferred unless the partner converts this contribution into a capital contribution before the transfer by paying the value of his contribution (for non-capital contributions) or the total sum of his liability (for guarantee contributions) to the Company in the form of a share capital increase. The Articles may prohibit or restrict the transfer or the encumbrance of share parts. They may also provide an option that allows partners to acquire the share parts of another partner who wishes to transfer them, or the right of the Company to indicate a partner or a third party who should acquire the share parts to be transferred. The share parts may be seized even if their transfer is prohibited or restricted by the Articles.

1.6 Transformation of existing companies into the new company form of Private Company

Any company may be transformed into a Private Company in accordance with the provisions regulating its current company form, and those applying to the Private Company. The resolution issued by the competent corporate body, which relates to the transformation, as well as the new company's Articles (now that it is a Private Company) are registered with the General Commercial Registry. The transformed company does not lose its legal personality; it simply continues to operate under the new company form of a Private Company.

The transformation will not take effect if, within one month from such registration, one or more creditors of the company file written objections against the transformation, requesting *e.g.* sufficient guarantees in case the financial condition of the company justifies such protection. However, the court may allow the transformation on the petition of the company if it considers that the objections are not justified, taking into account the company's financial condition or the guarantees already received by or offered to the creditors.

Initially, the Act provided an incentive for existing EPEs to be transformed into the new company form following a resolution taken with a lower majority than the majority required by the Law on limited liability companies, or within the EPE's Articles (if the Articles provide a higher majority). According to the Act, existing EPEs could resolve on their transformation into a Private Company by a resolution of their Partners' Meeting taken either by a two-thirds majority of the partners representing two-thirds of the share capital or by a three-quarter majority of the share capital. Such incentive applied until 31 December 2013.

1.7 Transformation of a Private Company into another company form

A Private Company may be transformed into another company form following a decision of the partners taken by a three-quarter majority of the share capital. In the event that, following the transformation, the partners of the Private Company are to be held liable for the company's debts, the explicit consent of all partners is required.

The transformation must be effected in accordance with the provisions regulating the new company form. Upon registration of the transformation decision and the new articles of association to the General Commercial Registry, the transformed Private Company continues to operate under the new company form. The company does not lose its legal personality and any pending judicial cases continue under the name of the company under its new form. Administrative permits that had been issued to the Private Company continue in force. In the event that the Private Company is transformed into a *société anonyme* or an EPE, an evaluation of its capital is effected; in the event that its capital is less than the capital required by law for a *société anonyme* or an EPE, the difference is to be covered by new contributions.

1.8 Conclusion – statistical data

This new company form constitutes a very attractive choice for investors, principally because of the fact that no capital is needed for its incorporation, as well as the lack of formalities and its flexibility, as it gives the partners the ability to form company relationships at their own discretion. However, in terms of its fiscal treatment, the Private Company is subject to the tax provisions applying to EPEs and, therefore, it must maintain double entry books ("third category books" of the now-abolished Code of Books and Records[3]), also kept by *sociétés anonymes* and EPEs, which can be considered to be a significant downside.

3 The Code of Books and Records has been abolished by virtue of Law 4093/12.11.2012 and replaced by the Code for the Tax Recording of Transactions, effective since January 2013.

The first Private Company was incorporated on 21 June 2012. By 1 October that year, 139 Private Companies had been established in Greece, 56% of which had a minimum capital of less than €4,500, i.e. the minimum capital required for an EPE. The majority of Private Companies had only capital contributions[4], and the vast majority were incorporated through a private document (91%)[5].

Should you wish to discuss the formation, or transformation, of an entity in Greece, please speak with the authors of this briefing, Maira Galani and Eirini Portokalaki, any member of our team in Greece, or your regular contact at Watson, Farley & Williams.

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4 Only 10% of the incorporated private companies had either non-capital or guarantee contributions or both.

5 Statistical data provided during the 22nd PanHellenic Conference on Company Law held in Larissa in October 2012.

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