Greece

Treasury Shares Guide
IBA Corporate and M&A Law Committee 2012

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INTRODUCTION

This guide provides an overview on the legal requirements for the acquisition and sale of treasury shares of Greek corporations.

It is a practical manual covering general aspects on the acquisition and sale of treasury shares, and any implications arising under the legal regime in force.

This guide is general and should not be relied upon as advice on any acquisition and sale of treasury shares. Anyone involved in such transaction should seek specific advice. This guide reflects the law as at 28.2.2012.

GENERAL OVERVIEW

Is the buyback of shares permitted in your jurisdiction?

Under Greek law a Greek limited company ("anonimi etaireia") may directly or indirectly repurchase its own shares for various purposes, subject to the reservation of complying with the principle of equal treatment of shareholders and the provisions stipulated in L.3340/2005 on insider dealing and market manipulation. It is important to state that although a corporate has such a right, particular attention must be paid to the restrictions laid down by the applicable legal framework.

What are the characteristics (maximum holdings, voting rights and other rights) of treasury shares?

When a company holds shares by way of a buy-back program, either directly or indirectly through a person acting in his own name but on the company's account, the rights attaching to the shares are suspended, in particular:

1) These shares do not confer either a right of representation in the general meeting or a voting right, and are not taken into account for the establishment of quorum.
2) Dividends of treasury shares shall pro-rata increase the dividends of other shares.
3) In case of a capital increase, the pre-emptive right corresponding to the treasury shares cannot be exercised.
4) If shares are included among the assets shown in the balance sheet, a reserve of the same amount, unavailable for distribution, shall be included among the liabilities.

Treasury shares may not exceed 10% of the paid-up share capital.

What are the main reasons to acquire treasury shares?

A buy-back programme could aim to reduce the capital of an issuer (in value or in number of shares) or to meet obligations arising from any of the following:

a) debt financial instruments exchangeable into equity instruments;
b) employee share option programmes or other allocations of shares to employees of the issuer or of an associate company.

Acquisition of treasury shares may also aim to stabilize the stock price of a company, subject to the requirements and restrictions laid down by the Greek Market Abuse Directive implementing Law (3340/2005) and EC Regulation 2273/2003.

REGULATORY FRAMEWORK

Under Greek law, Greek corporations, i.e. Greek limited companies ("anonimi etaireia") are permitted to repurchase own shares but only in compliance with the requirements laid down in article 16 of L. 2190/1920 concerning the legal framework of a "Société Anonyme" as amended by article 21 of L. 3604/2007 which partially implements EC Directive 2006/68.

Greek legislation on treasury shares has implemented:

1) Second Council Directive 77/91/EC of December 1971 in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, as amended by Directive 92/101 EC of 23 November 1992 and by Directive 2006/68/EC.
2) Commission Regulation (EC) no. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
3) Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse - implemented via L. 3340/2005).

ACQUISITION OF TREASURY SHARES

How can a company acquire treasury shares?

A company can acquire treasury shares by way of a buy-back program.

Acquisition of own shares takes place *causa solvendi*, thus the company has to enter into specific agreements with the individual shareholder. Furthermore, the purchase of own shares occurs by way of a (i) purchase agreement with an existing individual shareholder (over the counter), (ii) on the stock exchange market.

Are there any restrictions in acquiring treasury shares? (e.g. purpose-wise; accounting-wise?)

Article 16 of L. 2190/1920 as amended by article 21 of L. 3604/2007 generally allows the repurchase of shares by the company. In order to do so, the company has to meet certain technical requirements involving, inter alia, the purchase conditions and the duration allowed for the company to own such shares in its portfolio.

More specifically the companies which are to repurchase shares shall be in conformity with the following:

a) "the principle of equality of shareholders", with regard to the different categories of shares. This principle must be deemed as having been observed when the shares are sold via the stock exchange market since anonymity is always ensured when trading the shares in the electronic trading system. In this event, there can be no discriminatory treatment of shareholders while at the same time free access to the stock market provides to all shareholders equal opportunities to participate in the process of acquisition of own shares
b) Comply with the provisions regarding insider dealing and market manipulation (market abuse)

Moreover, the acquisition of treasury shares must have been approved by a decision of the general meeting, specifying the conditions of the acquisition and most importantly the duration of

the period for which the approval is given, which cannot exceed 24 months and the minimum and maximum price thresholds. The following must also be taken into account :

a) the nominal value of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not exceed the 1/10 of the subscribed and paid-up capital;
b) the acquisitions, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not have the effect of reducing the net assets below the amount mentioned in point (1) of article 44a (i.e. below the amount which corresponds to the capital of the company and its held reserves).
c) only fully paid-up shares may be included in the transaction

The aforementioned, point (a) is not applicable when the acquisition of shares takes place in order to be allocated to employees of the issuer or of an affiliate company. In this case the said provision requires the company to allocate the acquired shares within 12 months from the time of acquisition otherwise the shares shall be cancelled and the capital shall be reduced by an amount corresponding to the value of the cancelled shares .

Exceptions:

The above points (a, b and c) are not applicable and the above authorisation decision of the general meeting is not required (i.e., exceptionally the decision for acquisition of own shares is taken by the board of directors) in the cases where:

a) shares are acquired by way of applying a decision for the reduction of capital
b) shares are acquired following a universal transfer of property
c) fully paid-up shares are acquired as a gift or in the case of banks as commission
d) shares are acquired pursuant to an obligation resulting directly by law or a court decision and aiming to protect the minority, especially in the cases of an merger or change of company's objectives etc.
e) fully paid-up shares are acquired by way of an auction after a compulsory enforcement against the owner of the shares for a claim of the company against him.

The shares acquired according to the aforementioned scenarios b' to e' must be transferred within the time limit of three (3) years the latest, from the time of acquisition, unless the nominal value of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, does not exceed the 1/10 of the subscribed capital. In this event a monetary fine of up to € 30,000 may be imposed to any liable BoD member / director.

Note: Shares acquired in violation of the above must be transferred within one (1) year from the time of acquisition, otherwise they are cancelled and correspondingly the capital is reduced by the value of the cancelled shares.

Which authorization is needed?

As aforementioned, the acquisition of treasury shares is subject to an approval provided by the general meeting of shareholders with the above mentioned minimum content, unless one or more of the above exceptions apply. The said decision must provide the appropriate authorization to the persons executing the relevant agreement and formalities, namely the Board of Directors which is in any event, pursuant to the said Article 16, responsible for compliance with the existing regime and for the correct implementation of the transaction in general.

What are the publicity requirements in the event of acquisition of treasury shares?

Article 16 par. 9 of the said L. 2190/1920 states the following:

Where a company acquires its own shares, either itself or through a person acting in his own name but on the company's behalf, the annual report must state at least:

a) the reasons for acquisitions made during the financial year;
b) the number and nominal value or, in the absence of a nominal value, the par value of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;
c) in the case of acquisition or disposal for a value, the consideration for the shares;
d) the number and nominal value or, in the absence of a nominal value, the par value of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent.

Note that the decision of the general meeting required for the authorisation of the acquisition of own shares has to be published in the relevant commercial registry and published in the Government Gazette, pursuant to the general requirements of publicity with respect to decisions issued by the general meeting of the shareholders.

With respect to listed companies, ATHEX rulebook requires the issuer to send to ATHEX with the view to post on its website, an announcement regarding any decision relating to the buyback or transfer of own stock. This announcement must be sent by no later than the business day following the date of the General Meeting or of the decision of the appropriate body of the issuer which took the relevant decision and must, at the very minimum, state the terms and conditions governing the intended buyback or transfer, in accordance with the provisions of legislation in force.

Moreover, the company in order to ensure the transparency of such transaction must comply with publicity requirements laid down in article 4 of EC Regulation 2273/2003. Specifically, prior to the start of trading, full details of the programme approved in accordance with Article 19(1) of Directive 77/91/ EEC must be adequately disclosed to the public in Member States in which an issuer has requested admission of its shares to trading on a regulated market.

Those details must include the objective of the programme, the maximum consideration, the maximum number of shares to be acquired and the duration of the period for which authorisation for the programme has been given. Subsequent changes to the programme must be subject to adequate public disclosure in Member States.

The issuer must have in place the mechanisms ensuring that it fulfils trade reporting obligations to the competent authority of the regulated market on which the shares have been admitted to trading. These mechanisms must record each transaction related to ‘buy-back’ programmes, including the information specified in Article 20(1) of Directive 93/22/EEC.

The issuer must publicly disclose details of all transactions no later than the end of the seventh daily market session following the date of execution of such transactions.

Put and call options – do they count as acquisition of own shares?

Greek legal theory supports that the conclusion of a put and call option is not deemed to constitute acquisition of own shares, however this is not entirely free of any doubt. After the exercise of the put or call option, the company shall always be deemed as having acquired the relevant shares. In case of put options, if the corporate is not in a possession of treasury shares and needs to acquire

them in order to redeliver them, the requirements detailed above regarding the acquisition of treasury shares will apply, too.

UTILIZATION OF TREASURY SHARES

Are there any statutory obligations to resell or redeem treasury shares?

As aforementioned (Article 16 of Law 2190/1920), an obligation to resell or redeem treasury shares only exists if the number of shares acquired exceeds the 1/10 of the subscribed capital.

How are treasury shares redeemed?

Redemption of shares takes place where law requires treasury to be transferred within a time frame and this requirement is not met. In concrete in the aforementioned exemptions (see above) shares acquired must be transferred within the time limit of three (3) years the latest, from the time of acquisition, unless the nominal value of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, does not exceed 1/10th of the subscribed and paid-up capital.

In addition, if the shares are not transferred in time, they shall be cancelled. The cancellation results in a decrease of the capital share of the company. The cancellation of the shares and the decrease of the capital requires a decision of the general meeting of the shareholders taken pursuant to § 1 and § 2 of article 29 and § 1 of article 31 of L.2190/1920 in simple quorum and majority.

Moreover, shares acquired in violation of the requirements stipulated in article 16 of L.2190/1920 must be transferred within one (1) year from the time of acquisition, otherwise they are cancelled and correspondingly the capital is reduced by an amount equal to the par value of the cancelled shares.

SALE OF TREASURY SHARES

How can the company sell treasury shares?

The company can sell treasury shares by way of (i) an agreement with a specific person –or (ii) on the stock market, via a public offer or in separate multiple trades.

Are there any restrictions for selling treasury shares?

Treasury shares are sold in accordance with the existing corporate rules. Inter alia, the transaction involving selling of treasury shares must be in line with the "principle of equality of shareholders" pursuant to article 30 of L. 2190/1920. Moreover, the issuer, holder of the treasury shares, must not proceed in selling them within the period in which the buyback transaction is still pending.

Which authorization is needed for selling treasury shares?

In general the sale of shares takes place after relevant approval of the competent body as that is stipulated in the Articles of Association. Competent bodies are the general meeting and the board of directors of the company. Unless otherwise stipulated in the Articles of Association, competent body for approving the sale of treasury shares is the board of directors (but within the framework established by the initial approving decision of the Shareholders Meeting). It is worth noting that

the decision, upon which the conditions of the buyback transaction are settled, can include also the terms and conditions for the selling of the said treasury shares (time frame, responsible body etc).

Can treasury shares be sold other than via the stock exchange or by public tender offer?

Yes, the company can proceed in selling the treasury shares by way of a purchase agreement with a specific person after reaching a conclusion on the terms of the said agreement (over the counter).

What are the publicity requirements in the event of a sale of treasury shares?

The issuer must send to ATHEX with the view to be posted on its website an announcement regarding any decision relating to the buyback or transfer of own stock. This announcement must be sent by no later than the business day following the date of the General Meeting or of the decision of the appropriate body of the issuer which took the relevant decision and must, at the very minimum, state the terms and conditions governing the intended buyback or transfer, in accordance with the provisions of legislation in force.

What legal restrictions are there in order to avoid market abuse?

As already mentioned one of the most important aims relating to the buyback of own shares is the stabilization of stock price. This type of transaction might lead to market manipulation. There are two possibilities on which such transaction shall not consist market abuse, (i) if the transaction is included within the exemptions of article 9 of L. 3340/2005 which implements regulation 2273/2003 EC and according to which every transaction relating to buyback of own shares shall not consist of market abuse if it is concluded in conformity with the provisions laid down in EC regulation 2273/2003 (ii) the transaction is in conformity with the 'Accepted market practices', which shall mean according to directive 2003/6/EC all "…practices that are reasonably expected in one or more financial markets and are accepted by the competent authority…".

(i) The buyback of own shares by the company is not considered as market abuse when the decision of the general meeting relating to the buyback of own shares is concluded for the purposes laid down in article 3 of EC reg. 2273/2003 (known as the "safe harbour" provision), more specifically for reducing the capital of an issuer (in value or in number of shares) or to meet obligations arising from any of the following:

   a) debt financial instruments exchangeable into equity instruments;
   b) employee share option programmes or other allocations of shares to employees of the issuer or of an associate company.

(ii) In order for the Hellenic Capital Market Commission to reach a conclusion on whether the transactions shall be considered as 'Accepted market practices' it shall examine the level of transparency, the implications of the practice in the market, the extent to which liquidity and market efficiency is affected etc.

Consequently, in order to ensure transparency the company must ensure that it complies with the requirements laid down in § 4 of article 4 of EC Regulation 2273/2003, i.e. the issuer must publicly disclose details of all transactions, as well as the number of stocks these transactions involve, no later than the end of the seventh daily market session following the date of execution of such transactions.

According to Hellenic Capital Market Commission explanatory circular no. 114/15.5.2007, the commission may consider a buyback transaction as abusive particularly when:

a) buyback transaction is entered in a higher price than the price of the last independent trade ("uptick rule").
b) the purchase of own shares exceeds in total per day 25% of the average daily trading volume of the previous 20 meetings.
c) the issuer proceeds into selling treasury shares in the same period of time while the purchase of treasury shares is still pending
d) treasury shares are being purchased while the issuer has decided to delay the public disclosure of inside information in accordance with article 11 of L. 3340/2005.

TREASURY SHARES AND TAKEOVER LAW

What are the general implications of treasury shares under the applicable takeover law regime?

Acquisition and holding of treasury shares by a listed company can create implications under applicable takeover law. The fact that no voting rights are attached to treasury shares (§ 8 of article 16 of L. 2190/1920) can result in an indirect effect on the share quota and voting power of the shareholders. Moreover, the treasury shares are not taken into consideration for calculating the thresholds which trigger a mandatory public bid, i.e. when a shareholder holds more than 1/3 of the total voting rights of the offeree company or holds 1/3 of voting rights without exceeding 50% of the total voting rights of the offeree company and obtains within 12 months, directly or indirectly, shares of the offeree company which represent 3% of the total number of voting rights of the offeree company he is then obligated to proceed to a mandatory bid for all remaining shares. In addition it is important to examine whether the acquisition of treasury shares could lead in a change of these thresholds thus triggering the application of a mandatory public offer. Moreover, treasury shares must be aggregated with shares of the company's controlling shareholders in order to determine whether the mandatory bid obligation shall arise, because, pursuant to the relevant definition of the Greek takeover law (Article 2 (e)), such persons are deemed as acting "in concert".

Treasury Shares as defense measures?

This may be possible only indirectly by increasing the price of the shares (subject to the above anti-market abuse provisions), since there would be no voting rights on these shares.